TRANSCRIPT C[illegible]CORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 125 150

UNITED STATES RUBBER COMPANY, a Corporation; L. Candee & Co., a Corporation, and Metropolitan National Bank of Chicago, a Corporation, Petitioners,

vs.

AMERICAN OAK LEATHER COMPANY, PFISTER & Vogel Leather Company; Thomas E. Wilder and John Wilder, Copartners as Wilder & Company; Eagle Tanning Works, United States Leather Company, Lambeau Leather Company, The Barber Bros. Company, Boston Blacking Co., Bulletin & Good Roads, Carson-Pirie Monthly Co., Carver Cotton Gin Co., Calvert Lithographing & Engraving Co., B. E. Cole & Co., Colburn, Fuller & Co., Consumers' Box Manufacturing Co., The Continent Shoe Company, Crooks, Root & Co., Cycling Gazette, Easton Boot & Shoe Company, Estabrook-Anderson Shoe Company, Farnsworth, Hoyt & Co., I. P. Farnum, C. C. Farwell & Co., P. A. Field & Co., Fletcher Mfg. Co., A. F. Gallun & Sons, H. M. George & Co., Goldsmith, Rosenbush & Levie, Goodyear Rubber Co., The R. J. Gunning Co., M. L. Hiller & Sons, A. J. Marcus & Co., J. & H. Mayer, H. Michaels & Co., Milwaukee Tack Co., W. J. McBride, Pliable Shoe Co., Rouse, Maniers, Williams & Co., Shattuck & Binger, A. W. Shaw & Co., T. J. Shay & Co., The Singer Manufacturing Co., W. W. Spaulding, Spinney, Virtue & Co., Stowe, Bills & Hawley, Thilmany Pulp & Paper Mills, Tubular Rivet & Stud Company, University of Chicago Weekly, George H. Van Pelt, Wachusett Mills, Weir Bros. Paper Co., Consolidated Hand Method Lasting Machine Co., Hilliard & Merrill, Tripp Giant Leveller Co., Dry Goods Reporter Co., and E. H. Van Ingen & Co.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR CERTIORARI FILED OCTOBER 30, 1899.

CERTIORARI AND RETURN FILED FEBRUARY 23, 1900.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No.

UNITED STATES RUBBER COMPANY, A CORPORATION, L. CANDEE & CO., A CORPORATION, AND METROPOLITAN NATIONAL BANK OF CHICAGO, A CORPORATION,

Petitioners,

vs.

AMERICAN OAK LEATHER COMPANY, PFISTER & VOGEL LEATHER COMPANY, THOMAS E. WILDER AND JOHN WILDER, CO-PARTNERS AS WILDER & COMPANY, EAGLE TANNING WORKS, UNITED STATES LEATHER COMPANY, LAMBEAU LEATHER COMPANY, THE BARBER BROS. COMPANY, BOSTON BLACKING CO., BULLETIN & GOOD ROADS, CARSON-PIRIE MONTHLY CO., CARVER COTTON GIN CO., CALVERT LITHOGRAPHING & ENGRAVING CO., B. E. COLE & CO., COLBURN, FULLER & CO., CONSUMERS' BOX MANUFACTURING CO., THE CONTINENT SHOE COMPANY, CROOKS, ROOT & CO., CYCLING GAZETTE, EASTON BOOT & SHOE COMPANY, ESTABROOK-ANDERSON SHOE COMPANY, FARNSWORTH, HOYT & CO., I. P. FARNUM, C. C. FARWELL & CO., P. A. FIELD & CO., FLETCHER MF'G CO., A. F. GALLUM & SONS, H. M. GEORGE & CO., GOLDSMITH, ROSENBUSH & LEVIE, GOODYEAR RUBBER CO., THE R. J. GUNNING CO., M. L. HILLER & SONS, A. J. MARCUS & CO., J. & H. MAYER, H. MICHAELS & CO., MILWAUKEE TACK CO., W. J. McBRIDE, PLIABLE SHOE CO., ROUSE, MANIERE, WILLIAMS & CO., SHATTUCK & BINGER, A. W. SHAW & CO., T. J. SHAY & CO., THE SINGER MANUFACTURING CO., W. W. SPAULDING, SPINNEY, VIRTUE & CO., STOWE, BILLS & HAWLEY, THILMANY PULP & PAPER MILLS, TUBULAR RIVET & STUD COMPANY, UNIVERSITY OF CHICAGO WEEKLY, GEORGE H. VAN PELT, WACHUSETT MILLS, WEIR BROS. PAPER CO., CONSOLIDATED HAND METHOD LASTING MACHINE CO., HILLIARD & MERRILL, TRIPP GIANT LEVELLER CO., DRY GOODS REPORTER CO. AND E. H. VAN INGEN & CO.

Respondents.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, A. D. 1898.

No. 398.

UNITED STATES RUBBER COMPANY, A CORPORATION, L. CANDEE & CO., A CORPORATION, AND METROPOLITAN NATIONAL BANK OF CHICAGO, A CORPORATION,

Appellants,

vs.

THE AMERICAN OAK LEATHER COMPANY, W. J. McBRIDE, ESTABROOK-ANDERSON SHOE COMPANY, LAMBEAU LEATHER COMPANY, UNIVERSITY OF CHICAGO WEEKLY, CROOKS, ROOT & CO., THILMANY PULP & PAPER MILLS, THOMAS E. AND JOHN E. WILDER, UNITED STATES LEATHER COMPANY, PFISTER & VOGEL LEATHER COMPANY, EAGLE TANNING WORKS,

Appellees.

MR. EDWARD S. ISHAM,
MR. WILLIAM G. BEALE,
MR. HENRY S. ROBBINS,
MR. GILBERT E. PORTER,
Counsel for United States Rubber Company and L. Candee & Co., Appellants.

MR. GEORGE A. FOLLANSBEE,
MR. MITCHELL B. FOLLANSBEE,
Counsel for Metropolitan National Bank, Appellant.

MR. FREDERICK A. SMITH,
MR. JACOB NEWMAN,
MR. GEORGE W. NORTHRUP,
MR. EDWIN M. ASHCRAFT,
MR. NEWTON F. GORDON,
MR. WILLIAM J. MANNING,
MR. S. P. McCONNELL,
MR. HORACE K. TENNEY,
MR. M. LESTER COFFEEN,
MR. CHARLES F. HARDING,
Counsel for Appellees.

Appeal from the United States Circuit Court, Northern District of Illinois, Northern Division.

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Pleas in the Circuit Court of the United States for the Northern District of Illinois, Northern Division, in Chancery sitting at the United States Court room in the City of Chicago, in said District and Division, before the Hon. Peter S. Grosscup, Circuit Judge of the United States for the Northern District of Illinois, on the 4th day of May, in the year of our Lord one thousand eight hundred and ninety-nine, of the December term of said court, 1899, and of our independence the one hundred and twenty-third year. Pleas

S. W. BURNHAM,
Clerk.

The American Oak Leather Company, A Corporation, etc.
vs.
C. H. Fargo & Co., a Corporation, United States Rubber Company, a Corporation, L. Candee & Company, a Corporation, Metropolitan National Bank of Chicago, a Corporation, and John W. Arnold, United States Marshal. } 24,238.

Be it remembered that on this day, to wit, the eleventh day of September, 1896, came the complainant in said entitled cause by its solicitors and filed in the clerk's office of said court its Bond for Costs and Bill of Complaint, which said Bond and Bill are respectively in the words and figures following, to-wit:

nd for Costs, 2
iled Sept. 11,
896.

BOND FOR COSTS.

United States of America,
Northern District of Illinois, } ss.
Northern Division.

CIRCUIT COURT TO OCTOBER TERM, A. D. 1896.

The American Oak Leather Company, et al.
vs.
C. H. Fargo & Co. et al.

I hereby enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the complainants of any costs ordered or adjudged to be paid by them, I hereby agree and stipulate that execution may issue against my property for all costs not exceeding two hundred dollars taxed against said complainants.

Dated this 11th day of September A. D. 1896.

GEORGE W. NORTHRUP,
Residence 5735 Madison Ave., Chicago, Ill.

I, George W. Northrup, a surety on the annexed bond, being duly sworn, depose and say that I am worth in real estate, situate in the Northern District of Illinois, the sum of one thousand dollars, over and above my just debts and liabilities.

GEORGE W. NORTHRUP.

Sworn to and subscribed before me, this eleventh day of September, 1896.

HARRY GOODMAN,
(Seal.) Notary Public in and for Cook County, Illinois.

(Endorsed) Filed Sept. 11, 1896.

S. W. BURNHAM,
Clerk.

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3 BILL OF COMPLAINT.

Bill of Complaint filed Sept. 11, 1896.

United States of America,
Northern District of Illinois.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES
For said District.

To the Honorable judges of said Circuit Court of the United States in chancery sitting:

Your orator, The American Oak Leather Company, of the City of Cincinnati, in the State of Ohio, a corporation organized and existing under and by virtue of the laws of the State of Ohio, and a citizen of the State of Ohio, brings this its bill of complaint, against C. H. Fargo & Co. of Chicago, Illinois, a corporation organized and existing under and by virtue of the laws of the State of Illinois, and a citizen of the State of Illinois; the United States Rubber Company, of the City of..... New Jersey, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and a citizen of the State of New Jersey; L. Candee & Company of the City of.....Connecticut, a corporation organized and existing under and by virtue of the laws of the State of Connecticut, and a citizen of the State of Connecticut; John W. Arnold, of Chicago, Illinois, United States Marshal for the northern district of Illinois, northern division, and a citizen of the State of Illinois; and The Metropolitan National Bank of Chicago, a corporation organized and existing under and by virtue of the banking laws of the United States, and a citizen of the State of Illinois, and thereupon your orator complains and says:

1. That on the 28th day of August, A. D. 1896, your orator brought its suit against said C. H. Fargo & Co. to recover the sum of twelve thousand eight hundred and twenty-nine and 56/100 dollars ($12,829.56) in which sum said C. H. Fargo & Co. was then and there, and for a long time prior thereto had been indebted to your orator for merchandise theretofore sold and delivered by your orator to said C. H. Fargo & Co., at its special instance and request. That said C. H. Fargo & Co. was duly and in apt time served with process in said suit, and thereafter such proceedings were had in said suit, that on the 10th day of September, A. D. 1896 (the

Bill of Complaint. Filed Sept. 11, 1896

same being one of the regular days of the September term 1896, of the Superior Court of Cook County in the State of Illinois), your orator recovered a judgment at law against

4 Superior Court of Cook County against said defendant C. H. Fargo & Co. for the sum of twelve thousand eight hundred and twenty-nine and 56/100 dollars ($12,829.56) and costs of suit, for which amount, with interest, said judgment was duly rendered and entered of record in the said Superior Court of Cook County, which was then and there, now is and always has been a court of general jurisdiction in the State of Illinois. That on the 10th day of September, A. D. 1896, an execution was duly issued upon said judgment against the property of said defendant C. H. Fargo & Co., and duly delivered on the 10th day of September, A. D. 1896, to James Pease, Esq., sheriff of said Cook County, to execute where said defendant C. H. Fargo & Co., then resided and had its principal place of business; that said execution was thereafter by said James Pease, as such sheriff of Cook County, returned wholly unsatisfied, he, as such sheriff, certifying upon said execution that he could find no property of said defendant C. H. Fargo & Co., whereon to levy, to make the whole, or any part of the amount of said execution, as by the record of said judgment and the execution and return thereon, on file in said Superior Court of Cook County, will more fully appear, and to which, for more certainty your orator pray leave to refer; that at the time your orator obtained said judgment and caused execution to be issued thereon and delivered to said sheriff, and said sheriff returned said execution *nulla bona*, one Frank E. Makeel of Chicago, Illinois, was then and there, and on the 7th day of August, A. D. 1896, had been appointed receiver of all and singular the property and assets of said C. H. Fargo & Co. in a certain cause then and there pending in the Circuit Court of Cook County in the State of Illinois, on the chancery side thereof, wherein The Lambeau Leather Company is complainant and said C. H. Fargo & Co. and others are defendants; that said Circuit Court of Cook County in said cause of The Lambeau Leather Company vs. C. H. Fargo & Co. et al. appointed said Frank E. Makeel as receiver of all and singular the property and assets of said C. H. Fargo & Co. by an order entered of record in said cause on the 7th day of August, A. D. 1896, and by subsequent orders entered of record in said cause affirmatory thereof; that said Frank E. Makeel qualified as such receiver at the time he was so appointed, and ever since has been and now is acting as such receiver of said C. H. Fargo & Co. of all the property of every kind and nature belonging to said C. H. Fargo & Co., or in which it is or can be interested, is the property

Bill of Compl'
filed Sept 1
1896

inafter described as having been assigned, transferred or conveyed to said United States Rubber Company, L. Candee & Company and Metropolitan National Bank of Chicago, and the property seized by said John W. Arnold as United States marshal, under the two executions issued on the judgment in favor of said United States Rubber Company and said L. Candee & Company as hereinafter set forth, and that C. H. Fargo & Co. did not, on the 10th day of September, A. D. 1896, or for more than thirty days next prior thereto, have, own or control any property, of any kind, or nature whatsoever, situate in the State of Illinois, other than the property hereinafter mentioned and described, and the proceeds arising from the sale of said property, which proceeds are now in the hands of said John W. Arnold, United States Marshal, as hereinafter set forth.

2. Your orator further represents that Charles H. Fargo, Charles E. Fargo, Frank M. Fargo, Heyliger A. DeWindt and Edward A. Fargo, on or about the 17th day of December, A. D. 1889, procured to be issued by the Secretary of State in and for the State of Illinois, a certificate of incorporation, certifying that said corporation known as C. H. Fargo & Co. was organized and completed and authorized to carry on the business for which it was organized; but said certificate of incorporation was not filed for record in the recorder's office of Cook County, Illinois, as the law requires the same to be filed, and was not filed until on on about the 6th day of October, A. D. 1891.

3. That it appears from the records in said recorder's office that said corporation so organized and known as C. H. Fargo & Co. was organized for the purpose of manufacturing and dealing in boots and shoes and other merchandise, machinery and implements, and that the capital stock of said corporation was four hundred thousand ($400,000) dollars, divided into four thousand (4,000) shares of one hundred ($100) dollars each. That its location is at the City of Chicago, in the County of Cook and State of Illinois, and its duration is ninety-nine (99) years, from and after the year A. D. 1889; and that the capital stock of said corporation, amounting to four hundred thousand ($400,000) dollars as aforesaid, was originally subscribed for as follows:

Names of Subscribers.	Number of Shares.	Amounts.
Charles H. Farge,	2,000	$200,000
Charles E. Fargo,	500	50,000
Frank M. Fargo,	500	50,000
Heyliger A. DeWindt,	500	50,000
Edward A. Fargo,	500	50,000

1 of Complaint, filed Sept. 11, 1896.

6 4. That on the 6th day of January, A. D. 1886, the to capital stock of said company was held and owned as follow
Charles E. Fargo held and owned 1,373 shares thereof,
Frank M. Fargo held and owned 1,295 shares thereof,
Edward A. Fargo held and owned 1,332 shares thereof,
and your orator is credibly informed and believes that said sto has continued to be held and owned as last set forth, for more th six months previous to said January 6th, A. D. 1896, and ever sin said 6th day of January, A. D. 1896, has been and still is so he and owned.

5. That in the month of December, A. D. 1895, the officers said corporation of C. H. Fargo & Co. were the following: Charl E. Fargo was president, and has continued as such president fr thence hitherto; Frank M. Fargo was vice-president and treasure and has continued as such vice-president from thence hitherto a continued as such treasurer until the 9th day of January, A. 1896, Edward A. Fargo was secretary, and continued as such sec tary from thence until the 9th day of January, A. D. 189 Charles E. Fargo, Frank M. Fargo, Edward A. Fargo, C. D. Steel William F. Hayes, J. F. Byrnes and Joseph A. Deidrich were rectors and continued as such directors until the 8th day of Jan ary, A. D. 1896.

6. Your orator further shows that said United States Rubb Company is a corporation organized, existing and doing busine under the laws of the State of New Jersey, having its princip office and place of business in the City of.....in the State of Ne Jersey, and L. Candee & Company is a corporation organize existing and doing business under the laws of the State of Connec cut, having its principal office and place of business in the City ....., in the State of Connecticut. Said two last named corpo tions, for brevity will be hereafter described as "Two Forei Corporations."

7. That during the month of December, A. D. 1895, and f some time prior thereto, said C. H. Fargo & Co. was, and ever sin has remained hopelessly insolvent and bankrupt, and was indebt in the sum of over four hundred thousand ($400,000) dollars, a that all its assets during said period of time did not exceed value the sum of two hundred and fifty thousand ($250,000) d lars, and it was during said month of December, A. D. 1895, s ever since has remained wholly unable to meet its debts and oblig tions in the usual course of business. That the said insolven

and bankruptcy of said C. H. Fargo & Co. and it said
7 financial condition were during said month of December, A. D. 1895, well known to all the officers and directors of said C. H. Fargo & Co.

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8. That, as your orator is informed and believes and so charges the fact to be, said C. H. Fargo & Co., its officers and directors, then and there in the month of December, A. D. 1895, on account of its said insolvency and inability to obtain further credit concluded and determined that it was and would be impossible for said C. H. Fargo & Co. to further continue its business or further prosecute the business for which it was organized, and then and there concluded and determined to forthwith wind up the business of said C. H. Fargo & Co., and no longer carry on said business, and said conclusion and determination to so wind up said business then and there became known to said two foreign corporations. Your orator further represents that said two foreign corporations then and there claimed to be creditors of said C. H. Fargo & Co., as follows: Said United States Rubber Company upon open account for the proceeds of consignments of merchandise in the sum of about one hundred thirty-five thousand ($135,000) dollars, and said L. Candee & Company as guarantor or endorser on notes of said C. H. Fargo & Co. theretofore given by C. H. Fargo & Co. to L. Candee & Company to the amount of forty-four thousand nine hundred ($44,900) dollars, which said notes had been prior to that time sold, assigned and delivered by said L. Candee & Company to other parties and said L. Candee & Company were not at the time the holders or owners of said notes, or any or either of them, but then and there claimed to be liable upon said notes as endorser or guarantor.

8a. That said two foreign corporations, well knowing the financial condition of said C. H. Fargo & Co. and its intention, and the intention of its officers to cease doing business as aforesaid, and fearing that if said C. H. Fargo & Co. would then and there cease doing business and wind up its affairs, that they would not then and there be able to obtain satisfaction of their said claims and demands against said C. H. Fargo & Co., in or about said month of December, A. D. 1895, entered into a fraudulent agreement with said C. H. Fargo & Co. and its said then stockholders, which will be hereinafter, for brevity, designated as the "Trust Agreement" in and by which agreement it was in substance provided that said two foreign corporations should be immediately placed in control of said C. H. Fargo & Co., and have sole and exclusive power and author-

ity to manage, operate, control and direct the business and affairs
8 of said C. H. Fargo & Co. And it was further arranged in and by said Trust Agreement that said transfer of control of said C. H. Fargo & Co. should be effectuated secretly, and without the knowledge of the public or the other creditors of said C. H. Fargo & Co., and kept secret so as to enable said C. H. Fargo & Co. to continue apparently doing business for a limited time, and that said C. H. Fargo & Co. should continue during said period to purchase merchandise on credit and should turn the same or the proceeds thereof over to said two foreign corporations as hereinafter set forth, and should secure and prefer said two foreign corporations out of the assets and property then owned by said C. H. Fargo & Co., and out of the property and merchandise which should be hereafter purchased by said C. H. Fargo & Co. to the exclusion of the other creditors of said C. H. Fargo & Co., and to defraud, hinder and delay the other creditors of said C. H. Fargo & Co., but it was not intended that said C. H. Fargo & Co. should bona fide continue business, but, on the contrary, it was intended that said C. H. Fargo & Co. should continue in business for a limited time only, and only for the purpose of consummating said Trust Agreement.

9. That said secret and fraudulent trust agreement between said C. H. Fargo & Co. and its stockholders and said two foreign corporations, having been entered into as aforesaid, was furthered, consummated and carrid out in the following manner.

10. That as appears by the records of said C. H. Fargo & Co. on the 6th of January, A. D. 1896, a meeting of the board of directors of said C. H. Fargo & Co. was held, at which, as appears by said records, Charles E. Fargo, Frank M. Fargo, E. A Fargo, W. F. Hayes and Charles D. Steele were present and Charles E. Fargo acted as president of said meeting And, as appears by said records, at said meeting said Charles E. Fargo as such president, made a statement concerning the financial condition of said C. H. Fargo & Co., and stated that said C. H. Fargo & Co. was in great need of ready money to meet present engagements, and informed the said directors in meeting assembled, that one Charles L. Johnson, the agent and representative of the United States Rubber Company, and L. Candee & Company, who it was stated by said president, were two of the largest creditors of C. H. Fargo & Co., had been in Chicago for several days in consultation with him, said president, respecting the indebtedness said to be owing by said C. H. Fargo & Co. to said United States Rubber Company

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and said L. Candee & Company, and said president further stated that he had applied to said Johnson for financial assistance to said C. H. Fargo & Co., and had made an arrangement subject to the approval of said C. H. Fargo & Co., which appears
9 in the resolution hereinafter set forth. And the said Charles E. Fargo as such president, thereupon offered to said meeting the following resolution, to-wit:

"Whereas, said company is indebted to a large amount, and is in need of present financial assistance to continue its business, although it has assets (unavailable, however, for the present necessities) largely in excess of its liabilities, and

"Whereas, the United States Rubber Company, a corporation and L. Candee & Company, a corporation, are among the largest creditors of this company, that is to say, this company is indebted to the United States Rubber Company upon open account for the proceeds of consignments in a sum between $135,000 and $140,000, the exact amount of which cannot now be stated with accuracy, and this company is also indebted upon its notes heretofore given to L. Candee & Company to the amount of $44,900 and interest, upon which notes L. Candee & Company, having discounted the same, is liable as guarantor or endorser to the present holders thereof, and

"Whereas, this company has applied to Charles L. Johnson, representing the United States Rubber Company and L. Candee & Company for the assistance necessary in the present emergency, and said Johnson is willing to render the same by procuring to be advanced to this company the sum of $50,000 as follows: $10,000 on this day; $10,000 on or before January 10, 1896, $10,000 on or before January 13, 1896, $10,000 on or before January 16, 1896, and the remaining $10,000 on or before January 20, 1896,—but only upon the conditions that said money shall be used to reduce the indebtedness of this company as it matures, and that the United States Rubber Company and L. Candee Company, which Mr. Johnson represents shall be fully protected and secured, and be made preferred creditors to the extent of the total present and future liability, absolute or contingent, of this company to said Rubber Companies, and each of them, in the particular manner hereinafter set forth, and

"Whereas, it is the belief of this board that with the assistance of said Johnson as aforesaid, this company can overcome its pres-

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ent difficulties, this board is therefore willing to agree to the con
tions as required by said Johnson in consideration of his promise
furnish, and of his furnishing such assistance.

"Now, therefore, be it resolved that upon said Johnson's fu
nishing or agreeing to furnish, in the manner above mentioned, t
sum of $50,000 to this company, the officers of this compa
10 be and are hereby authorized and empowered to execute
said Johnson the several plain notes of this company, aggr
gating $51,500, payable to L. Candee & Company, which s
Johnson desires to use for the purpose of discount; and that t
officers of this company are further empowered to execute and
liver to said Johnson its three judgments notes in the amounts a
for the purposes following: One for $140,000, payable to t
United States Rubber Company, to secure our said indebtedness
that company, one for $45,000, payable to L. Candee & Compa
to protect and secure that company against its liability as guaran
or endorser upon the notes heretofore given to it by this compa
aggregating about $44,900; and one for $51,500 payable to
Candee & Company, as further security to that company for $5
000, which Johnson agrees to procure to be advanced by t
company to this company as aforesaid with interest thereon, a
also to protect and secure L. Candee & Company against its l
bility upon the plain promissory notes above authorized to be gi
as evidence of such advance; each of said judgment notes to
payable on demand, and to bear interest at 6% per annum, and

"Be it resolved, that in further consideration of the said a
vance of $50,000 to this company in the manner aforesaid, and
compliance with the requirements of said Johnson, which he ma
an express condition of said advance, this board of direct
and this company hereby promises and agrees that whene
it shall be found necessary for this company to suspend bu
ness, it will then assign and transfer to said Johnson for s
Rubber Companies as additional securities for their claims agai
this company, all such book accounts, credits, bills receiva
and choses in action as shall be then owned by or due to t
company."

And thereupon, on motion of said Charles E. Fargo, second
by Frank M. Fargo, said resolution was unanimously adopted
said directors.

11. That said record of said C. H. Fargo & Co. showing

ansactions last specified, is dated January 6th, 1896, and is signed Bill of Complaint filed Sept. 11, 1896
y Charles E. Fargo, F. M. Fargo, E. A. Fargo, W. F. Hayes and
. D. Steele, and by no other directors.

12. That, as further appears from the records of said C. H. argo & Co., a meeting of the stockholders of said C. H. Fargo & o. was held on the 8th day of January, A. D. 1896, and it is ecited by said record that at said meeting Charles E. Fargo, owning 1,373 shares of the capital stock, F. M. Fargo owning 1 1,295 shares of the capital stock and E. A. Fargo owning 1,332 shares of the capital stock were present, said shares constituting l of the capital stock of said company. That, as further appears y said records, at said last named meeting of stockholders the pro-edings of the board of directors on the 6th day of January, A. D. 896, were read, ratified and approved unanimously.

13. That, as further appears by the records of said C. H. Fargo Co. a meeting of the stockholders of said corporation was held the 9th day of January, A. D. 1896, and the said record recites at there were present at said last named meeting the following ockholders, to wit: Charles E. Fargo, owing 1,373 shares of the pital stock, F. M. Fargo owning 1,295 shares of the capital ock, and E. A. Fargo, owning 1,332 shares of the capital ock, said shares constituting all the capital stock of said company; d it is also stated that at said last named meeting George C. Mad-on, Tiffany Blake, Buell McKeever, Frederick B. Fuller, Charles Fargo, F. M. Fargo and Gilbert E. Porter were elected as di-ctors of said company for the year then ensuing.

14. And your orator further shows unto your honors that said eorge C. Madison, Tiffany Blake, Buell McKeever, Frederick B. uller and Gilbert E. Porter were, and each of them was at said st named date in the employ of Messrs. Isham, Lincoln and Beale, unselors and attorneys at law in Chicago, Illinois, and that said essrs. Isham, Lincoln and Beale, were at said time, and for a long ne prior thereto had been, and ever since have been, and now are e legal counsel and advisers in the city of Chicago, in the ate of Illinois, of said Two Foreign Corporations. That none of id directors last named at said time, or at any other time held or wned any share of stock of said C. H. Fargo & Co. or had any terest in said last named corporation whatever, but were, and ch of them was nominally elected to the office of director of said H. Fargo & Co. solely as agent and representative of said Two

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Foreign Corporations; and said directors last named were at the time of their election, and each of them was and ever since has been wholly under the control and direction of said United States Rubber Company, L. Candee & Company and Messrs. Isham, Lincoln and Beale, as attorneys of said Two Foreign Corporations. That in fact, said Two Foreign Corporations, being legally unable to act as directors of said C. H. Fargo & Co. by reason of the fact that they were corporations and not individuals, caused said directors last named to be elected as directors in the name, place and stead of said United States Rubber Company and L. Candee Company solely for the purpose and to the end that the said di-
12 rectors last named might act as directors for and on behalf of said Two Foreign Corporations, in their place and stead, and under their control, and subject to their direction, and that in fact and in equity, the election of said George C. Madison, Tiffany Blake, Buell McKeever, Frederick B. Fuller and Gilbert E. Porter as directors of said C. H Fargo & Co. was an election of said United States Rubber Company and L. Candee & Company as directors of said C. H. Fargo & Co. That for brevity your orator will hereinafter describe said directors last named as "Dummy Directors."

15. That, as also appears from the records of said C. H. Fargo & Co. on the same day on which said Dummy Directors were elected, as above specified, to wit: on the 9th day of January, A. D. 1896, a pretended meeting of said Board of Directors was held at the office of Messrs. Isham, Lincoln and Beale, at which there were present said Charles E. Fargo, F. M. Fargo, Buell McKeever, Tiffany Blake, George C. Madison, Frederick B. Fuller and Gilbert E. Porter, at which meeting on motion of Gilbert E. Porter Charles E. Fargo was elected president of said company for the year ensuing and F. M. Fargo was elected vice-president of said company for the year then ensuing, and said Buell McKeever was elected to fill the offices of both secretary and treasurer for the year then ensuing. And your orator further shows that said McKeever thereupon accepted said offices of secretary and treasurer, and has ever since acted as such secretary and treasurer, but that said McKeever, when he accepted said offices, accepted the same merely as agent and employee of said Two Foreign Corporations and has always been and acted as such secretary and treasurer solely as agent and employee of said Two Foreign Corporations, and subject to their directions and control, and that all the acts of said McKeever as such secretary and treasurer have in fact been acts of said Two Foreign Corporations, and that in fact said Two Foreign

Corporations became on the 9th day of January, A. D. 1896, by and through said McKeever, in fact secretary and treasurer of said C. H. Fargo & Co. and ever since have so remained and have acted as such. Bill of Compla filed Sept. 11, 1896

16. And your orator further shows that ever since the formation of said Trust Agreement, said Charles E. Fargo and F. M. Fargo have acted as president, vice-president and directors of said C. H. Fargo & Co. sole'y under the orders and directions of said Two Foreign Corporations, and in furtherance of the purposes, aims and terms of sai l Trust Agreement.

13 17. Your orator further show that at said last named meeting the following resolution was also adopted and passed.

"Resolved, that Section 3, Article IV of the By-Laws of this Company, as passed January 31, 1890, be and the same is hereby amended so that said Section 3, Article IV shall read as follows, to-wit:

"The president, or in his absence, the vice-president shall be empowered to sign and endorse ordinary promissory notes, and to make and execute contracts, drafts and checks for the purpose of carrying on the usual and necessary business of the Company but no officer or officers of the Company shall have the power to sign, make or execute any agreement, warrant of attorney to confess judgment, contract or other instrument in writing having the effect to create a lien or charge or possibility thereof, upon the property and assets of the compony, or any part thereof, or having the effect to give any creditor or creditors of the Company any lien, charge or security upon said property and assets, or any part thereof, except pursuant to the special authority of the Board of Directors."

18. Your orator further shows that said election of said Dummy Directors, and the election of Said Buell McKeever as secretary and treasurer, and the passage of said two resolutions above set forth as having been passed on the 6th and 9th days of January, A. D. 1896, respectively, were and each of them was done and adopted in pursuance of said agreement hereinabove set forth and designated as the "Trust Agreement" and that by means of said proceedings and the arrangements above set forth, said Two Foreign Corporations obtained absolute control and authority, management and direction of said C. H. Fargo & Co.

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19. That immediately after the election of said Dummy ors, and the passage of said two resolutions, said Two Forei porations, by means of their said agents, to-wit, said Dum rectors and said McKeever, took possession and control of H. Fargo & Co., and all its business, property and affairs a since have continued in such possession and control, for t pose of managing, operating, controlling and directing the b property and affairs of said C. H. Fargo & Co. in pursuanc purposes and terms of said Trust Agreement; That since day of January, A. D. 1896, said Two Foreign Corporati ing through said Dummy Directors and said Buell McKeever, said C. H. Fargo & Co to purchase from your orator—The ican Oak Leather Company, and other persons, firms a
14 porations, who are now bona fide creditors of said C. H & Co, more than one hundred thousand dollars ($1 worth of goods on credit, for the amount of which said Fargo is still indebted to your orator and such other persons and corporations.

20. That in further consummation of said Trust Agr said Two Foreign Corporations, on or about the 6th day o ary, A. D. 1896, caused said C. H. Fargo & Co., by its sa officers, to execute and deliver to said Two Foreign Corpo the plain notes and the judgment notes specified in said res adopted on January 6th, A. D. 1896, and said notes were, about the 6th day of January, A. D. 1896, accordingly e and delivered by said C. H. Fargo & Co. by its said then off specified in said resolution.

21. Your orator further shows that under the said mana and control of said Two Foreign Corporations by their said Directors and said Buell McKeever, said C. H. Fargo & C tinued from and after the 9th day of January, A. D. 1896 come more and more financially embarrassed and hopelessly vent, until on or about said 5th day of August, A. D. 189 Two Foreign Corporations and C. H. Fargo & Co. and the thereof concluded that it would be impracticable to furth tinue the operation of said fraudulent Trust Agreement, o able said C. H. Fargo & Co. to further obtain merchan credit, and deemed it desirable to forwith wind up and close business of the said C. H. Fargo & Co. and appropriate t selves substantially all the remaining assets of said C. H. F Co. in final consummation of said Trust Agreement.

And thereupon said Two Foreign Corporations and the officers of said C. H. Fargo & Co. proceeded to consummate and carry out said design in the manner following, to-wit:

That on or about said 5th day of August, A. D. 1896 said C. H. Fargo & Co. was indebted to said Metropolitan National Bank of Chicago in the sum of about $40,000 and while so indebted, said Metropolitan National Bank, the officers of said C. H. Fargo & Co. and said Two Foreign Corporations, entered into a fraudulent agreement by which all the claims and demands of said Bank and said Two Foreign Corporations should be consolidated for the purpose of securing possession of and dominion over all the property and assets of said C. H. Fargo & Co. and thereby obtaining the unlawful preferences hereinafter set forth; That a a part of such agreement and consolidation it was provided that said bank
15 and said Two Foreign Corporations should divide and share between themselves all the property and assets so secured and the proceeds thereof, in proportion to their respective claims against said C. H Fargo & Co. That for the purpose of deceiving your orator and the other bona fide creditors of said C H. Fargo & Co. said bank and said Two Foreign Corporations caused the Resolutions hereinafter set forth to be adopted so as to make it appear that said bank and said Two Foreign Corporations were hostile to each other and that they occupied the position of diligent creditors, when in truth and in fact, the entry of the judgments in favor of said Two Foreign Corporations and said bank, and the conveyance to said bank of the real estate hereinafter set forth were done under and pursuant to the agreement between said bank and said Two Foreign Corporations as hereinbefore set forth; that as a further part of said agreement and for the purpose of inducing said Two Foreign Corporations—and the officers of said C. H. Fargo & Co. to enter into said agreement, said bank agreed to, and did, on or about said 5th day of August, A. D. 1896, pay to said Two Foreign Corporations or to some other person, firm, or corporation, under the orders and directions of said Two Foreign Corporations the sum of about ten thousand dollars ($10,000) which sum was so paid with the understanding and agreement then and there had, on or about said 5th day of August, A. D. 1896, between said bank, said Two Foreign Corporations and said officers of C. H. Fargo & Co., that said sum of ten thousand dollars ($10,000) should be added to and be made a part and parcel of the original claim of said Metropolitan National Bank amounting to $40,000, and thereby increase the claim of said Bank against C. H. Fargo & Co. from forty thousand dollars ($40,000) to the sum of fifty thousand dollars ($50,000), and that

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said bank should be secured for its said claim so wrongfully increased to fifty thousand dollars ($50,000). That said sum of ten thousand dollars ($10,000) so loaned and advanced by said Metropolitan National Bank under the orders of said Two Foreign Corporations was fictitious and was never advanced, or paid for the real benefit of C. H. Fargo & Co., but was paid solely for the use and benefit of parties other than said C. H. Fargo & Co., and that therefore the claim of said Metropolitan National Bank to the amount of about ten thousand dollars ($10,000) is fraudulent and excessive, and at least to that extent is not a bona fide claim against said C. H. Fargo & Co.

In order to carry out and consummate said plan and design the officers of said C. H. Fargo & Co. and said Two Foreign Cor-
16 porations on August 5th, A. D. 1896, caused a meeting of the directors of said C. H. Fargo & Co. to be held, at which meeting there were present Charles E. Fargo, F. M. Fargo, Tiffany Blake, George C. Madison and Gilbert E. Porter, and at said meeting the following resolution was adopted:

"Resolved that the President of this Company be, and he is hereby authorized to execute and deliver notes of the Company containing warrants of authority to confess judgment payable to the Metropolitan National Bank of Chicago for the aggregate sum of $50,000 in place of the plain notes of this Company now held by said Bank; provided, however, that the president of the company shall make such terms respecting the use by the bank of said judgment notes as shall prevent said notes or the judgments to be issued thereon from becoming liens upon any of the assets of this Company prior or superior to, or have a preference over judgments which may hereafter be entered upon the judgment notes heretofore given to the United States Rubber Company and L. Candee & Company respectively."

Also the following Resolution was adopted:

"Resolved that the President and Vice-President of this Company be, and they are hereby authorized to negotiate with the Metropolitan National Bank of Chicago for the company's sale and transfer to it of the Company's real estate and buildings at Dixon, Illinois in full satisfaction of $25,000 of the indebtedness of this company to said bank, and if such negotiations are successful, to execute and deliver to said bank a warranty deed of said real estate and buildings in consideration of said bank's delivering to this company $25,000 of the Company's notes now held or to be held by it."

That on the next day, to wit, August 6th, A. D. 1896, the offi- Bill of Complaint filed Sept. 11, 1896.
ers of said C. H. Fargo & Co. and said Two Foreign Corporations caused a meeting of the stockholders of said C. H. Fargo & Co. to be eld, and that said Charles E. Forgo, F. M Fargo and E. A. 'argo, were present at said meeting and unanimously adopted the ollowing Resolution:

"Resolved, that the president of this company be, and he is ereby authorized to assign and transfer all the outstanding book ccounts and choses in action belonging to this company to the 'nited States Rubber Company, with power to collect and receipt or the same as security for the indebtedness of this company o said United States Rubber Company and L. Candee & Company."

7 That in all said proceedings, meetings and resolutions, said officers of said C. H. Fargo & Co., said two foreign corporations and said bank acted by mutual agreement and in collusion, nd that as soon as said resolutions had been adopted on August 5th nd 6th, A. D. 1896, said two foreign corporations, said bank and aid officers of said C. H. Fargo & Co. proceeded to carry out and xecute said resolutions and said scheme and design in the manner ollowing, to-wit: said two foreign corporations, said bank and said fficers of said C. H. Fargo & Co. acting in conjunction and colusion as aforesaid on said August 6th, A. D. 1896, caused said C. I. Fargo & Co. to execute a certain instrument in writing purporting to assign, transfer and deliver unto said United States Rubber 'ompany all the outstanding book accounts and bills receivable, laims and demands payable to said C. H. Fargo & Co. amounting value to about one hundred thousand dollars ($100,000), and at he same time to then and there deliver all the books, records and apers of said C. H. Fargo & Co. evidencing said accounts receivable nd bills receivable, unto the said United States Rubber Company trust for itself said United States Rubber Company, said Metroolitan National Bank, and said L. Candee & Company, and for the le use and benefit of said United States Rubber Company, said letropolitan National Bank and L. Candee & Company, and said 'nited States Rubber Company then obtained and ever since has etained possession of said books and papers, and claims to own id accounts and bills receivable by virtue of said assignment and ransfer.

That immediately after said assignment and delivery of said acounts, books and papers as aforesaid on August 6th, A. D. 1896,

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said officers of said C. H. Fargo & Co. said bank and sa
foreign corporations acting in collusion and conjunction as
said caused judgments to be entered by confession in the
Court of the United States in and for the Northern Dist
Illinois, Northern Division, as follows, to-wit: One judgm
the sum of one hundred forty-five thousand four hundred
($145,400) in favor of said United States Rubber Compan
one judgment for thirty-eight thousand three hundred ($3
dollars, in favor said L. Candee & Company and one jud
for twenty-five thousand ($25,000.00) dollars in favor
Metropolitan National Bank in the Circuit Court of Cook C
Illinois.

22. Your orator further shows that on the 6th day of A
A. D. 1896, said C. H. Fargo & Co. was possessed of t
property and assets consisting of a stock of manufa
18 boots and shoes and business fixtures located in a brick
ing at the southwest corner of Market and Quincy str
the City of Chicago, County of Cook and State of Illinois,
fair market value of about one hundred thousand dollars ($10
and also of a manufacturing plant for the manufacture of bo
shoes and a stock of merchandise consisting of leather an
and shoes manufactured and in the process of being manufa
in the City of Dixon, in the Northern District of Illinois,
fair market value of about fifty thousand dollars ($50,000).
said bank and said two foreign corporations, having caus
judgments to be entered as aforesaid, thereupon on said 6th
August, A. D. 1896, caused executions to be issued upo
three judgments, and to be levied upon said property and as
cated in the City of Chicago, and City of Dixon, in the S
Illinois, as above set forth, that executions were duly issued
6th day of August, A. D. 1896, on said two judgments co
in the Circuit Court of the United States, and each of the
levied by said John W. Arnold, the United States Marshal
for the Northern District of Illinois, upon all the forego
scribed property, and said John W. Arnold then and the
possession of said property under said executions and levies.
on the same day and pursuant to said agreement so entered
or about August 5th, A. D. 1896, between said bank and s
foreign corporations, an execution was issued on said ju
confessed in favor of said bank in the Circuit Court of Cook
Illinois, and levied by James Pease, the sheriff of Cook
Illinois, upon the same property so levied on by said United
Marshal; which levy by said sheriff was however, in form,

to the levy so made by said United States Marshal, but was in act concurrent therewith, and said bank's execution was so levied subsequent to the levy of said marshal, for the sole purpose of deceiving your orator and the other creditors of said C. H. Fargo & Co. and giving said levies the appearance of being a race between diligent creditors, when in truth and in fact, at the time said three judgments were so confessed and executions issued thereon, said bank and said two foreign corporations and said officers of C. H. Fargo & Co., had agreed that said bank and said two foreign corporations should consolidate their claims and pro rate not only in the proceeds of said levies, but also in the proceeds arising from the conveyance to said bank of the factory, real estate located at Dixon, Illinois, and the proceeds arising from the collection of said outstanding book accounts, as herein set forth.

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That said property so levied on at Chicago, Illinois, was ad-
19 vertised for sale by said U. S. Marshal, and by him sold, under said two executions in favor of said two foreign corporations, on the 22nd day of August, A. D. 1896, for the sum of $65,000, and said factory personal property located at Dixon, Illinois (exclusive of the real estate) levied on by said United States marshal, was advertised for sale by him and sold on the 24th day of August, A. D. 1896, for the sum of fifteen thousand five hundred dollars ($15,500.00) that the factory building and the ground upon which it stands at Dixon, Illinois, was not sold by said marshal, but is claimed by said bank under the conveyance hereinafter set forth; that said property located at Chicago, Illinois, and the personal property located at Dixon, Illinois, so sold by the United States marshal on the 22nd and 24th days of August, A. D. 1896, was sold at a great sacrifice, and at a loss of many thousand dollars, and for which loss said bank and two foreign corporations are properly chargeable in this proceeding; that said sum of sixty-five thousand dollars ($65,000.00), and said sum of fifteen thousand, five hundred dollars ($15,500.00) together aggregating eighty thousand and five hundred dollars ($80,500.00) have been paid to and received by said John W. Arnold, United States Marshal, and are now held by him as such marshal, and your orator insists that said sum of eighty thousand five hundred dollars ($80,500.00) should be paid over by said United States marshal to a receiver to be appointed in this cause, by this court and held by such receiver to abide the event of this suit and proceeding.

That in further consummation of said agreement between said bank, said two foreign corporations and said officers of C. H. Fargo

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& Co. so entered into on the 5th day of August A. D. 1896, a pursuant to said fictitious resolutions, said C. H. Fargo & Co. co veyed by deed bearing date the 5th or 6th day of August A. 1896, to said Metropolitan National Bank of hicago, the follow described real estate situate in the City of Dixon, County of Lee, the State of Illinois, being the real estate and the factory buildi situate thereon used and operated by said C. H. Fargo & Co. as shoe factory, up to the 6th day of August, A. D. 1896.

A part of the southwest quarter (south of Rock River) of sect thirty-three (33), township twenty-two (22), north range nine Lee County, Illinois, bounded as follows: Commencing at the nort west corner of the east half of the northwest quarter of section f (4) in township twenty-one, north in range nine (9), as afores and running thence west two (2) chains and twenty-nine (29) link thence north (twelve degrees west) six (6) chains and seven 20 (70) links to Rock River, thence northeasterly along R River to a post and stone due north of the place of beginni thence south seven (7) chains and thirty-five (35) links to the pl of beginning containing 2 10/100 acres, more or less, (subj to existing highways thereon and subject to the right of the C cago and Northwestern Railway to occupy said highway with r road tracks).

Also part of subdivision lot number five (5) of the southw fractional quarter (south of Rock River) of section thirty-three township twenty-two (22) north of range number nine (9), east the fourth P. M. bounded and described as follows, to-wit: Beg ning at a stone at the southwest corner of said lot number five and running thence n rth along the west line of said lot four hu dred twenty-six (426) feet, thence southeasterly four hundred thir four (434) feet, to the south line of the said lot, thence west alo the said south line of said lot one hundred two (102) feet and fo (4) inches to the place of beginning, said lot number five being same designated, platted and described on the assessor's plat of s subdivision, recorded in the recorder's office of Lee County, Illino in book "A" of Miscellaneous Records on page 166.

That the nominal consideration named in said deed to said ba is the sum of twenty-five thousand dollars ($25,000.00) being half of said bank's claim of fifty thousand dollars ($50,000.00) said judgment so confessed in favor of said bank in the Circ Court of Cook County, being the other half of said claim, that s conveyance was so made to, received by, and is now held by s

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bank in trust for said Metropolitan National Bank and said two foreign corporations under said agreement entered into between them, on or about the 5th day of August, A. D. 1896, as hereinbefore set forth; your orator represents that such conveyance was and is fraudulent and void, and said bank should be compelled forthwith to convey said real estate to the receiver to be appointed in this cause.

23. Your orator further represents on information and belief that the claim of said United States Rubber Company against said C. H. Fargo & Co. is considerably less than the sum for which said judgment was confessed as aforesaid, and that said judgment is for at least thirty thousand dollars ($30,000.00) more than said C. H. Fargo & Co. is indebted to said United States Rubber Company, and your orator charge that said judgment so confessed in favor of the United States Rubber Company in said Circuit Court of the United States, in and for the northern district of Illinois, is void, and is in fact no judgment whatever, and that said court had no legal power or authority to issue said execution, and that the levy and sale so made thereunder by said United States Marshal, John W. Arnold, is absolutely null and void, as will fully appear by reference being had to the records of said judgment and proceedings therein shown by the files and records of said United States Circuit Court, to which your orators beg leave to refer and to produce and exhibit on the hearing of this cause, and that the claim of said Metropolitan National Bank against said C. H. Fargo & Co. as your orator is informed and believes, is at least ten thousand dollars ($10,000) less than said sum of fifty thousand dollars ($50,000), which it now claims to hold against said C. H. Fargo & Co., and that by reason of the matters hereinbefore set forth showing how the claim of said bank was increased from forty thousand dollars ($40,000) of fifty thousand dollars ($50,000) your orator insists that said judgment so confessed in favor of said bank and said conveyance so made to said bank, are absolutely null and void and of no effect whatever.

Your orator further represents on information and belief that the claim of said L. Candee & Company against said C. H. Fargo & Co. is considerably less than the sum for which said judgment was confessed as aforesaid, and that said judgment is for at least one thousand five hundred dollars ($9,500) more than said corporation is liable to said L. Candee & Company either directly or contingently, and your orator charges that said judgment so confessed in favor of L. Candee & Company in said Circuit Court of

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the United States, in and for the northern district of Illinois, void and is in fact no judgment whatever, and that said court had no legal power of authority to issue said execution, and that the levy so made thereunder by said United States Marshal John W. Arnold, is absolutely null and void, as will fully appear by reference being had to the records of said judgment and proceedings therein shown by the files and records of said United States Court, to which your orator begs leave to refer, and to produce and exhibit on the hearing of this cause; and your orator further charges that at the time said judgment note was so given to said L. Candee & Company, on or about the 6th day of January, A. D. 1896, said L. Candee & Company had no direct claim or demand against said C. H. Fargo & Co., but its said claim was then wholly contingent, and based upon alleged endorsements and guarantees of notes as aforesaid. And your orator further charges on information and belief that on the 6th day of January, A. D. 1896, when said two judgment notes were authorized to be executed and delivered by said resolution of January 6th, A. D. 1896, said C. H. Fargo & Co. was not directly indebted to either of said two foreign corporations in any sum, nor has it at any time since been directly indebted to them, or either of them, in any sum; but that if said C. H. Fargo & Co. was in any way liable to said two foreign corporations on January 6th, A. D. 1896, or at any time thereafter, its liability, if any, was that of a maker of notes or drafts which said two foreign corporations had prior to said 6th day of August, A. D. 1896, sold and delivered to other persons, firms or corporations, and at the time of such sale had endorsed or guaranteed such notes, and that by reason of the matters aforesaid said two judgments, and each of them, were confessed as aforesaid without valid consideration, and without authority of law and are void.

25. Your orator further shows that from and after the formation of said trust agreement above specified, made in December A. D. 1895, said two foreign corporations, and each of them as shown by the facts hereinbefore set forth, have been, and constituted a majority of the Board of Directors of said C. H. Fargo & Co., and the secretary and the treasurer thereof, and have by reason of said fact been merely trustees of the assets and property of said C. H. Fargo & Co. for the benefit of the creditors of said C. H. Fargo & Co. and therefore had no lawful right to cause said judgments to be entered in favor of said United States Rubber Company, said L. Candee & Company and said bank, or to cause executions to be issued thereon and levied on the property of said

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C. H. Fargo & Company as aforesaid, or to cause said book accounts, choses in action and books to be assigned and delivered to said United States Rubber Company as aforesaid, or cause said real estate to be conveyed to said Metropolitan National Bank, as aforesaid, for the purpose of paying the claims and demands of said two foreign corporations and said bank, and that said three judgments and executions and the liens attempted to be created thereby, and each of them as aforesaid, and said assignment of said unpaid book accounts, choses in action and books, and said conveyance of said real estate are in fraud of the rights of your orator.

26. And your orator further shows that on and after the levy of said executions and transfer of said book accounts, to-wit: on or about the 6th day of August, A. D. 1896, said corporation of C. H. Fargo & Co. ceased doing business, leaving debts unpaid; that said cessation of business was not temporary, but absolutely final and permanent and intended by said corporation and its officers so to be-and that said corporation of C. H. Fargo & Co. has never since said August 6th, A. D. 1896, resumed its said business in any manner or for any purpose whatever, and it intends not to resume the same, but has completely and absolutely deserted and abandoned its said business and the purposes for which it was originally chartered.

27. Your orator further shows on creditable information and belief, that said C. H. Fargo & Co. is now and ever since said month of December, A. D. 1895 has been hopelessly insolvent, that it has no property or assets except that hereinabove mentioned and described, that its total property and assets are not worth in fair market value to exceed two hundred and fifty thousand dollars ($250,000.00), and that its indebtedness exceeds four hundred thousand dollars ($40,000.00).

28. Your orator further represents that if any moneys were loaned or advanced by said two foreign corporations or either of them, in December, A. D. 1895, at any time thereafter, to said C. H. Fargo & Co. that all such moneys have been repaid by said C. H. Fargo & Co.

29. Your orator further represents that said outstanding book accounts so assigned by said C. H. Fargo & Co. on or about the 6th (6th day of August, A. D. 1896, to said United States Rub-

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ber Company in trust for said United States Rubber Company, L Candee & Company and Metropolitan National Bank of Chicago, s aforesaid, are now being collected and converted into money by sa United States Rubber Company through Messrs. Isham, Lincoln Beale, who were then, and ever since have been, and now ar the counsel and legal representatives of said Two Foreign Co porations and said bank in and about the matters herein before s forth; and that said United States Rubber Company ought to b ordered and directed by this court to assign and turn over to th receiver to be appointed in this proceeding all said outstanding boo accounts, papers, documents and evidences of indebtedness so re ceived and held by it, together with all moneys which have been co lected on account of said outstanding book accounts, claims and de mands and that such receiver continue the collection thereof an hold the proceeds to abide the final decree in this cause; that sai outstanding book accounts amount in value to over one hundre thousand dollars ($100,000.00) and now are, and represent the ent property belonging to, or in which said C. H. Fargo & Co. are in terested (except said real estate and the money in the hands of sa marshal) remaining undisposed of and not converted into money.

30. That said judgment so recovered by your orator in th 24 Superior Court of Cook County, Illinois, in the sum of twel thousand eight hundred and twenty-nine and 56-100 dolla ($12,829.56) remains in full force and wholly unsatisfied, and th amount aforesaid, with interest thereon, is now equitably due ther on, over and above all off-sets and counter claims; that this bill i not exhibited in collusion with said defendants, or any or either o them, or any other person for the purpose of protecting said defen ants, or the property of said defendants, or the property of any, sa or either of said defendants, from other creditors of said C. H. Farg & Co., but for the sole purpose of compelling payment of you orator's said judgment; that the aforesaid return of the sheriff o Cook County upon said execution was not procurred by the frau of your orator, but was made by said sheriff solely for the reas that he was unable to find property of said defendant in his sai county or elsewhere out of which, by levy and sale, he could realiz any part of the amount of your orator's said judgment.

31. Your orator further represents that said Frank E. Make as such receiver, has been unable to reach or obtain possession o the property now in the possession of said bank, said United States Rubber Company and said marshal, and that said Metro politan National Bank of Chicago, said United States Rubbe

Company and said Marshal refuse to assign, convey and deliver the property respectively held by them to said receiver, Frank E. Makeel, and deny the right of said Frank E. Makeel to demand or receive said property or any part thereof. Bill of Complaint filed Sept. 11, 1896.

32. That said property so held by said Metropolitan National Bank of Chicago, said United States Rubber Company and said John W. Arnold, United States Marshal, ought to be applied, in equity and good conscience, to the satisfaction of your orator's said judgment, but said defendants neglect and refuse to so apply the same or any part thereof.

Forasmuch, therefore, as your orator is remediless in the premises, save in a court of equity, and to the end that the said C. H. Fargo & Co., United States Rubber Company, L. Candee & Company, John W. Arnold, United States Marshal, and Metropolitan National Bank of Chicago, and each of them, may full, true direct and perfect answer make to this bill of complaint, and all the matters and things hereinabove set forth (but not under oath their and each of their respective answers under oath being hereby expressly waived), that it may be decreed that the said United States Rubber Company, and L. Candee & Company, and each of them, became, on or about January 6th, A. D. 1896, and ever since have remained in effect, officers and directors of said C. H. Fargo & Co., and in conjunction with said Metropolitan National Bank of Chicago, trustees of the assets of said C. H. Fargo & Co., for the benefit of its creditors, and unable therefore, to lawfully prefer themselves, or to pay to themselves out of the assets of said C. H. Fargo & Co., any indebtedness that might be owing from said C. H. Fargo & Co., to them or either of them, to the exclusion of your orator or the other creditors of said C. H. Fargo & Co.

And that it may be decreed that said sum of eighty thousand and five hundred dollars ($80,500.00), being the proceeds of the sale of said property so levied upon by said John W. Arnold, as hereinabove set forth, is a trust fund for the benefit of your orator and the bona fide creditors of said C. H. Fargo & Co., and should be distributed as such trust fund, and that your orator's said judgment should be paid in full.

And that said judgments so entered of record in the Circuit Court of the United States, for the Northern District of Illinois, on the th day of August, A. D. 1896, in favor of said United States Rubber Company and said L Candee & Company against C. H. Fargo

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& Co., and the two executions issued thereon, be vacated, set as
and held for naught, and that the liens upon the property of s
C. H. Fargo & Co., created by the levy of said two executions
each of them, be decreed to be null and void, and that said John W
Arnold be ordered and directed to turn and deliver over all s
proceeds arising from the sale of said property so held under s
two executions to the receiver to be appointed in this cause.

And that the said judgments so entered of record in the Circ
Court of Cook County, Illinois, in favor of said Metropolitan N
tional Bank of Chicago, on the 6th day of August, A. D. 1896, a
the execution issued thereon, be vacated and set aside and held f
naught, and that the lien upon the property of said C. H. Far
& Co., created by the levy of said execution, be decreed to be n
and void, and that said John W. Arnold be ordered and directed
turn and deliver over all said proceeds arising from the sale of s
property, in his hands to the receiver to be appointed in this cau

That said deed, recorded in the recorder's office, in and for
County of Lee in the State of Illinois, conveying said facto
property (being the real estate hereinbefore described), to s
Metropolitan National Bank of Chicago, be vacated and set asi
and held for naught, and that said Metropolitan National Bank
Chicago be ordered and directed by this court to convey s
26 real estate forthwith to the receiver to be appointed in t
cause, who shall hold said real estate, when so conveyed
him, subject, and to abide the final decree in this cause:

That all instruments by which the outstanding book accou
claims and demands of said C. H. Fargo & Co. have been assig
to said United States Rubber Company, as hereinbefore set fo
shall be vacated, cancelled and set aside and held for naught, a
that said United States Rubber Company be ordered and direct
to assign and deliver all said outstanding book accounts, claims a
demands into money and hold the proceeds thereof to abide t
final decree in this cause.

That said principal defendant, C. H. Fargo & Co., may set fo
fully and distinctly, the nature and situation, the amount and va
of all its property, interests and effects whatsoever, including thi
in action of whatever nature or kind, with all particulars relati
thereto, and state whether or not, at the time of the filing of t
your orator's bill of complaint, said defendant, C. H. Fargo & C
had not debts due to it to a considerable amount, in addition to

ebts and outstanding book accounts so assigned to, and now held by said United States Rubber Company. And that said C. H. Fargo & Co. may state and give a detailed history of all its property of every kind and character, wherever the same may be situate or found, that an order be entered herein appointing some discreet person as receiver, with the usual powers of receivers in like cases, of all the property, equitable interests, things in action and effects of said C. H. Fargo & Co., including all the property hereinbefore mentioned and described and held by said defendants, to be by said receiver collected, marshaled and distributed under the direction of this court.

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That an account may be taken of the indebtedness due your orator and the other bona fide creditors of said C. H. Fargo & Co., and that the receiver herein be directed to pay your orator and the other creditors of said C. H. Fargo & Co. and that he be ordered to apply for that purpose all moneys, property and choses in action which may come into his hands for that purpose.

That all the books, papers and documents of every kind and nature, be turned over by said defendants and each of them, to the receiver to be herein appointed.

That said United States Rubber Company, L. Candee & Company, C. H. Fargo & Co., John W. Arnold, United States Marshal, and Metropolitan National Bank of Chicago, and each of them and their and each of their agents, attorneys, officers, servants and deputies, be restrained and enjoined from selling, paying over, delivering, or in any other manner disposing of, all, any or either of the property and assets now in their hands or in the hands of any or either of them, as hereinbefore set forth, until the further order of this court, and especially that said John W. Arnold, United States Marshall, be restrained and enjoined from paying over said eighty thousand and five hundred dollars ($80,500.00) now in his hands, and by him derived from the sale of said property as hereinbefore set forth, or any part thereof, to said United States Rubber Company, L. Candee & Company and said Metropolitan National Bank of Chicago, or any or either of them, or their, or either of their agents, attorneys, officers and servants until the further order of this court; and that said United States Marshal be ordered and directed to hold said sum of eighty thousand and five hundred dollars ($80,500.00) until the further order of this court:

That said United States Rubber Company, L. Candee & Com-

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pany and said Metropolitan National Bank of Chicago and each of them, and their, and each of their agents, attorneys, officers and servants, be restrained and enjoined from selling, assigning, paying over, or in any other manner disposing of said outstanding book accounts so assigned by said C. H. Fargo & Co. to said United States Rubber Company on or about the 6th day of August, A. D. 1896.

And may it please your Honors to grant unto your orator the Peoples' Writ of Injunction, to be directed to said C. H. Fargo & Co., United States Rubber Company, L. Candee & Company, John W. Arnold, United States Marshal, and Metropolitan National Bank of Chicago, their agents, attorneys, officers and servants and each of them, enjoining and restraining them, as it is hereinabove prayed that they be enjoined and restrained until the further order of the court.

And that your orator may have such other and further relief in the premises as shall be equitable, and to your Honors shall seem meet and agreeable to equity and good conscience.

And your orator further prays that the usual writ of subpœna in Chancery issue out of the clerk's office of this court, directed to the said defendants, C. H. Fargo & Co., United States Rubber Company, L. Candee & Company, John W. Arnold, United States Marshal, and Metropolitan National Bank of Chicago, commanding them and each of them to appear and answer this bill of complaint at the first day of the next term thereof, and then and there to stand
28 to and abide by such order and decree in the premises as to your honors shall seem meet and agreeable to equity.

And your orator will ever pray, etc.

THE AMERICAN OAK LEATHER COMPANY,
By JAMES D. NEILSON,
Manager.

SMITH, HELMER, MOULTON & PRICE,
NEWMAN, NORTHRUP & LEVINSON.
Solicitors for Complainant.

State of Illinois, }
County of Cook. } ss.

James D. Neilson being first duly sworn deposes and says he is the duly authorized agent in this behalf of the American Oak Leather Company, the complainant in the foregoing bill of complaint, and

y authorized to and does make this affidavit for and on behalf of Bill of Complaint filed Sept. 11, 1896.
l complainant; affiant further says that he has read the foregoing
of complaint and knows the contents thereof, and that said bill
complaint and the matters and things therein set forth are
e except that as to the matters therein stated to be set forth on
ormation and belief, affiant is credibly informed and verily be-
es them to be true.

JAMES D. NEILSON.

Subscribed and sworn to before me this 11th day of September,
D. 1896.
al.]

JOHN H. PENNY,
Notary Public in and for Cook County, Illinois.

(Endorsed) Filed Sept. 11, 1896.

S. W. BURNHAM,
Clerk.

n the same day, to-wit, the eleventh day of September, 1896, a
of Subpœna, issued out of the clerk's office, directed against
defendants in said entitled cause, which said Writ, together with
Memorandum thereto attached and the order of the court ap-
ting H. S. Stoddard, special deputy, together with his return
on endorsed is in words and figures following, to-wit:

SUBPŒNA.

Subpœna, issued Sept. 11, 1896.

United States of America,
Northern District of Illinois. } ss.
Northern Division.

United States of America. To C. H. Fargo & Company,
ited States Rubber Company, L. Candee & Company, John
. Arnold, United States Marshal, and Metropolitan National
nk of Chicago, Greeting:

e command you, and every of you, that you appear before
Judges of our Circuit Court of the United States of America,
he Northern District of Illinois, at Chicago, in the Northern
ion of said District, on the first Monday in the month of
ber, next, to answer the bill of complaint of The American

Subpoena, issued Sept 11, 1896.

Oak Leather Company, of the city of Cincinnati, State of Ohio, a corporation, &c., this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To H. S. Stoddard, Special Deputy of the Northern District of Illinois, to execute.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago, aforesaid, this 11th day of September, in the year of our Lord, one thousand eight hundred and ninety-six, and of our Independence the 121st year.

S. W. BURNHAM,
Clerk.

(Seal)

Memorandum.

The above named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court at Chicago, aforesaid, on or before the day to which the above writ is returnable, the complainants' bill will be taken against them as confessed, and a decree entered accordingly.

S. W. BURNHAM,
Clerk.

30 UNITED STATES CIRCUIT COURT.

Northern District of Illinois.

Northern Division.

Saturday, September 12th, 1896.

Present, Hon. John W. Showalter, Circuit Judge.

The American Oak Leather Company, a Corporation,
vs.
C. H. Fargo & Company, a Corporation, etc.
} In Chancery, 24,238.

It appearing to the Court that John W. Arnold, the United States Marshal, is a party defendant in the above entitled cause, it is ordered that H. S. Stoddard, of the City of Chicago, Illinois, be and he is hereby appointed to serve process in said action.

Special Deputy's Return.

Return of Special Deputy, filed Sept. 14, 1896.

I have served the within writ within my district, in the following manner, to-wit:

Upon C. H. Fargo & Company, therein named on the 14th day of September A. D. 1896, by personally delivering a true copy of said Writ to Edward A. Fargo, secretary and treasurer of said C. H. Fargo & Company, Charles E. Fargo, the president of said company not being found in my district.

Upon the United States Rubber Company therein named on the 14th day of September, A. D. 1896, by delivering a true copy of said Writ to A. G. Burt, in the presence of W. G. Beale, Esq. a member of the firm of Isham, Lincoln & Beale, attorneys for said United States Rubber Company, Mr. Charles B. Allen, the Chicago agent of said Company being absent from the city, leaving Mr. A. G. Burt as his representative.

Upon L. Candee & Company, therein named on the 12th day of September, A. D. 1896, by personally delivering a true copy of said Writ to Pierpont Isham, Esq., a member of the firm of Isham, Lincoln and Beale.

Upon the Metropolitan National Bank of Chicago, therein named on the 12th day of September, A. D. 1896, by personally delivering a true copy of said Writ to H. H. Hitchcock, cashier of said bank.

Upon John W. Arnold, United States Marshal therein named on the 12th day of September, A. D. 1896, by personally delivering to him a true story of said Writ.

H. S. STODDARD,
Special Deputy.

(Endorsed) Filed Sep. 14, 1896.

S. W. BURNHAM,
Clerk.

On the twelfth day of September, in the July term of said Court, 1896, in the record of proceedings thereof in said entitled cause before the Hon. John W. Showalter, Circuit Judge, appears the following entry, to wit:

ORDER.

The American Oak Leather Company
vs.
C. H. Fargo & Company, a corporation, etc. } In Chancery 24,23

Order of Sept. 12, 1896, Appointing Special Deputy.

It appearing to the court that John W. Arnold, the Unit States Marshal, is a party defendant in the above entitled cau It is ordered that H. S. Stoddard, of the city of Chicago, Illino be, and he is hereby appointed to serve process in said action.

Aftewards, to wit, on the twenty-sixth day of September, in t July term of said court, 1896, in the record of proceedings there in said entitled cause before the Hon. John W. Showalter, Circ Judge, appears the following entry, to wit:

ORDER.

American Oak Leather Company
vs.
C. H. Fargo & Company, et al. } 24,238.

Order of Sept. 26, 1896, as to Motion for Appointment of Receiver.

Now come the parties by their solicitors on motion, It is order by the Court that the motion of complainant for the appointm of a receiver herein be entered and continued until October 1896.

Afterwards, to wit, on the First day of October, in the Ju term of said court, 1896, in the record of proceedings thereof said entitled cause, before the Hon. Peter S. Grosscup, Distr Judge, appears the following entry, to wit:

32 ENTRY.

American Oak Leather Comany,
vs.
C. H. Fargo & Company, et al. } 24238.

Order of Oct. 1, 1896, granting leave to file Intervening Petition.

Now come the parties by their solicitors, on motion leave is he

y granted W. J. McBride and others, Illinois creditors to file their ntervening petition herein.

Order of ot Oct. 1896, granting leave to filed I tervening Pet tion.

Leave is also granted Thilmany, Pulp and Paper Mills and others, esidents of other states than Illinois, to file their intervening pe- tion herein.

On the same day, to wit, the first day of October, 1895, there as filed in the clerk's office of said court an intervening petition of reditors, resident in the State of Illinois, which said petition is in e words and figures following, to wit:

NTERVENING PETITION OF CREDITORS RESIDENT IN THE STATE OF ILLINOIS.

United States of America.
orthern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES.

In and for the Northern District of Illinois.

nerican Oak Leather Company, a corporation, etc.,
vs.
H. Fargo & Co., a corporation, etc., United States Rubber Company, a corporation, etc., L. Candee & Co., a corporation, etc. and Metropolitan National Bank of Chicago. } Gen. No. 24238.

the Honorable Judge of the Circuit Court of United States, n Chancery Sitting:

Your petitioners respectfully represent unto your honor as fol- ws:

Intervening Pe tion of Credito Resident in Il nois.

1. That your petitioners are creditors of C. H. Fargo & Co., a cor- ration, etc., and were such creditors for a long time prior to the 5th day of August, A. D. 1896. That your petitioners became such creditors in the amounts hereinafter named, for goods, wares and merchandise sold and delivered by your petitioners pectively to said C. H. Fargo & Co., prior to said fifth day of

Intervening Petition of Creditors resident in Illinois, filed Oct 1. 1896

August, A. D. 1896, and that said C. H. Fargo & Co. became s
indebted to your petitioners respectively while and during the tim
said C. H. Fargo & Co., were prosecuting the business in whic
they were engaged, as set forth in said bill of complaint.

2. That said C. H. Fargo & Co. are indebted to your pet
tioners in the amounts set opposite their respective names, as here
inafter set forth, and that said amounts are due and owing to yo
petitioners respectively, over and above all counterclaims and se
offs, and that said C. H. Fargo & Co., have no defense whatever t
said several amounts or any or either of them. That the amount
so due your petitioners respectively, are as follows:

Names of Petitioners.	Amts. of Claims.
W. J. McBride,	$ 78.95
Weir Bros. Paper Co.	14.29
Goodyear Rubber Co.	70.00
George H. VanPelt	1,123.48
Carson Pirie Monthly Co.	48.75
The R. J. Gunning Co.	617.14
The Barber Bros. Company,	407.04
The Continent Shoe Company,	32.88
T. J. Shay & Co.	55.80
I. P. Farnum,	53.05
Consumer's Box Manufacturing Co.	400.46

3. That your petitioners were, at the time said bill of compla
was filed in said cause, and ever since have been, and now are citize
and residents of the State of Illinois.

4. That your petitioners adopt the allegations of the bill fi
in the above entitled cause, and beg leave to be made parties
said suit and proceeding, so that your petitioners as such credito
of said C. H. Fargo & Co. may participate in the proceeds aris
from said litigation and especially may participate and share in
moneys and property specified in said bill of complaint, and to re
which said bill of complaint was filed, as therein set forth.

5. Your petitioners hereby offer to pay their just proportion
all costs and expenses which may be incurred in prosecuting s
bill of complaint under the orders and directions of this court.

And your petitioners pray for such other and further relief in t
premises as to your Honor shall seem meet and proper.

4 And your petitioners will ever pray.

Intervening Petition of Creditors resident in Illinois, filed Oct. 1, 1896.

W. J. McBRIDE,
WEIR BROS. PAPER CO.,
GOODYEAR RUBBER CO.,
GEORGE H. VAN PELT,
CARSON, PIRIE MONTHLY CO.,
THE R. J. GUNNING CO.,
THE BARBER BROS. COMPANY.
THE CONTINENT SHOE COMPANY,
T. J. SHAY & CO.,
I. P. FARNUM,
CONSUMERS' BOX MANUFACTURING CO.
By NEWMAN, NORTHRUP & LEVINSON,
Solrs. for said Petitioners.

tate of Illinois, }
ounty of Cook. } ss.

Harry Goodman, being first duly sworn, deposes and says that e is the duly authorized agent of the respective persons, firms and orporations named in the foregoing petition as petitioners therein nd makes this affidavit for and on their behalf, and for and on be-alf of each of them, that he has read the foregoing petition and nows the contents thereof and that the same is true.

HARRY GOODMAN.

Subscribed and sworn before me, this 30th day of September, . D. 1896.

eal.) C. T. B. GOODSPEED,
Notary Public in and for Cook County, Illinois.

(Endorsed) Filed Oct. 1, 1896.

S. W. BURNHAM,
Clerk.

On the same day, to-wit: The first day of October 1896, came n-resident creditors, by their solicitors, and filed in the clerk's ice of said court their intervening petition, which said intervening tition is in the words and figures following, to-wit:

Intervening Petition of non-resident Creditors, filed Oct. 1, 1896.

35 INTERVENING PETITION OF NON-RESIDENT CREDITORS.

United States of America.
Northern District of Illinois. } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,
In and for the Northern District of Illinois.

American Oak Leather Company, a corporation, etc.,
vs.
C. H. Fargo & Co., a corporation, etc., United States Rubber Company, a corporation, etc., L. Candee & Co., a corporation, etc., and Metropolitan National Bank of Chicago. } Gen. No. 24,238.

To the Honorable Judge of the Circuit Court of the United States,
In Chancery Sitting:

Your petitioners respectfully represent unto your Honor as follows:

1. That your petitioners are creditors of C. H. Fargo & Co., a corporation, etc., and were such creditors for a long time prior to the 5th day of August, A. D. 1896. That your petitioners became such creditors in the amounts hereinafter named, for goods, wares and merchandise sold and delivered by your petitioners respectively to said C. H. Fargo & Co. prior to said fifth day of August, A. D. 1896, and that said C. H. Fargo & Co became so indebted to your petitioners respectively while and during the time said C. H. Fargo & Co. were prosecuting the business in which they were engaged, as set forth in said bill of complaint.

2. That said C. H. Fargo & Co. are indebted to your petitioners in the amounts set opposite their respective names, as hereinafter set forth, and that said amounts are due and owing to your petitioners respectively, over and above all counterclaims and set-offs, and that said C. H Fargo & Co. have no defense whatever to said several amounts or any or either of them. That the amounts so due your petitioners respectively, are as follows:

Intervening Petition of non-resident Creditors, filed Oct. 1, 1896

Names of Petitioners.	Amts. of Claims.
Thilmany Pulp & Paper Mills	$ 115 70
F. Gallun & Sons	409 51
olburn, Fuller & Co	692 56
ilwaukee Tack Co	42 38
hattuck & Bingar	705 00
oston Blacking Co	699 75
illiard & Merrill	744 30
J. Marcus & Co	273 40
liable Shoe Co	59 63
M. George & Co	199 50
& H. Mayor	160 00
alvert Lithograph & Engraving Co	315 00
owe, Bills & Hawley	219 00
arver Cotton Gin Co	53 10
H. Van Ingen & Co	1,078 09
arnsworth, Hoyt & Co	520 95
A. Field & Co	729 74
C. Farwell & Co	2,007 50
yeling Gazette	100 00
aston Boot & Shoe Co	5,571 77
letcher Mfg. Co	1,181 60
E. Cole & Co	2,500 00
pinney, Virtue & Co	186 50
ubular Rivet & Stud Company	1,069 77
Michaels & Co	460 00
L. Hiller & Sons	1,609 52
W. Spaulding	1,160 84
stabrook-Anderson Shoe Co	10,000 00

3. That your petitioners were, at the time said bill of complaint was filed in said cause, and ever since have been and now re, citizens and residents of States other than the State of Illinois, e State of Connecticut and the State of New Jersey.

4. That your petitioners adopt the allegations of the bill filed the above entitled cause, and beg leave to be made parties to said it and proceeding, so that your petitioners, as such creditors of id C. H. Fargo & Co., may participate in the proceeds arising om said litigation, and especially may participate and share in all oneys and property specified in said bill of complaint, and to ach which said bill of complaint was filed, as therein set forth.

5. Your petitioners hereby offer to pay their just proportion of

Intervening Petition of non-resident Creditors, filed Oct. 1, 1896.

all costs and expenses which may be incurred in prosecuting said bill of complaint under the orders and directions of this court.

37 And your petitioners pray for such other and further relief in the premises as to your honor shall seem meet and proper.

And your petitioners will ever pray.

THILMANY PULP & PAPER MILLS.
A. F. GALLUN & SONS,
COLBURN, FULLER & CO.,
MILWAUKEE TACK CO.,
SHATTUCK & BINGER,
BOSTON BLACKING CO.,
HILLARD & MERRILL,
H. A. MARCUS & CO.,
PLIABLE SHOE CO.
H. M. GEORGE & CO.,
J. & H. MAYER,
CALVERT LITHOGRAPH & ENGRAVING CO
STOWE, BILLS & HAWLEY,
CARVER COTTON GIN CO.
E. H. VANINGEN & CO.
FARNSWORTH, HOYT & CO.
P. A. FIELD & CO.
C. C. FARWELL & CO.
CYCLING GAZELTE,
EASTON BOOT & SHOE CO.
FLETCHER MFG. CO.
B. E. COLE & CO
H MICHAELS & CO.
W. W. SPAULDING,
EASTERBROOK-ANDERSON SHOE COMPANY.
TUBULAR RIVET & STUD CO.
SPINNEY, VIRTUE & CO.
M. L. MILLER & SONS.

By NEWMAN, NORTHUP & LEVINSON,
Solicitors for said Petitioners.

State of Illinois, } ss.
County of Cook. }

Harry Goodman, being first duly sworn, deposes and says that he is the duly authorized agent of the respective persons, firms and corporations named in the foregoing petition as petitioners therein

and makes this affidavit for and on their behalf, and for and on behalf of each of them, that he has read the foregoing petition and knows the contents thereof and that the same is true. Intervening Petition of non-resident Creditors, filed, Oct. 1, 1896.

HARRY GOODMAN.

38 Subscribed and sworn to before me this 30th day of September, A. D. 1896.

C. T. B. GOODSPEED,
(Seal.) Notary Public in and for Cook County, Illinois.

(Endorsed) Filed Oct. 1, 1896.

S. W. BURNHAM,
Clerk.

Afterwards, to-wit, on the 6th day of October, 1896, came United States Rubber Company, L. Candee & Company and John W. Arnold, United States Marshal, by their solicitors and entered their appearance in the clerk's office in said cause in words and figures following, to-wit:

APPEARANCE OF UNITED STATES RUBBER COMPANY, L. CANDEE & COMPANY AND JOHN W. ARNOLD, UNITED STATES MARSHAL. Appearance for U. S. Rubber Co., L. Candee & Co. and John W. Arnold, filed Oct. 6, 1896.

United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES.

For the Northern District of Illinois.

The American Oak Leather Company, a corporation,
vs.
C. H. Fargo & Co., United States Rubber Company, L. Candee & Company, John W. Arnold, United States Marshal, and The Metropolitan National Bank. } Gen. No. 24,238.

We hereby enter the appearance of United States Rubber Company, L Candee & Company and John W. Arnold, United States

Marshal in the above entitled cause, and our appearance as solicitors for said defendants.

ISHAM, LINCOLN & BEALE,
Solicitors for said defendants.

(Endorsed) Filed Oct. 6, 1896.

S. W. BURNHAM,
Clerk.

39 On the same day, to-wit: the sixth day of October, 1896, came United States Rubber Company, L. Candee and Company, by their solicitors and filed in the clerk's office of said court their joint and several answer to the bill of complaint in said cause, which said answer is in the words and figures following, to-wit:

United States of America,
Northern District of Illinois. } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES

For the Northern District of Illinois.

Answer of U. S. Rubber Co. and L. Candee & Co., filed Oct. 6, 1896.

The American Oak Leather Company,
Complainant,
vs.
C. H. Fargo & Co., a corporation, United States Rubber Company, a corporation, L. Candee & Company, a corporation, John W. Arnold, United States Marshal for said District, and The Metropolitan National Bank of Chicago, a corporation,
Defendants.
Gen. No. 24,238.

The joint and several answer of the United States Rubber Company, a corporation, etc., and L. Candee & Company, a corporation etc. defendants, to the bill of complaint of said The American Oak Leather Company, a corporation complainant:

These defendants saving and reserving to themselves all benefit of exception to the many errors, uncertainties and imperfections of said bill of complaint for answer thereto say as follows:

Answer of U. S. Rubber Co. and L. Candee & Co., filed Oct. 6, 1896.

First: These defendants believe it to be true and therefore admit that said complainant brought suit and recovered judgment against the defendant, C. H. Fargo & Co., in the Superior Court of Cook County, Illinois, as set forth in paragraph first of said bill of complaint; that execution was issued upon said judgment and delivered to the sheriff of said Cook County, the tenth day of September, as alleged in said paragraph; and that said execution was thereafter by said sheriff returned wholly unsatisfied. But these defendants aver that though the endorsement on the back of said execution by the sheriff of his return of said writ bears date of eptember 11th, 1896, and such endorsement may have been made on that day, yet the said writ of execution was not duly returned into the office of the Clerk of said Superior Court of Cook County until the fourteenth day of September, 1896, three days after the filing of the bill of complaint herein, as will by the Clerk's file mark upon said writ fully appear; and these defendants therefore claim that at the time the bill of complaint herein was filed the complainant had not exhausted its remedy at law against the defendant, C. H. Fargo & Co.

These defendants admit that the Circuit Court of Cook County, Illinois, on the 7th day of August, 1896, appointed Frank E. Makeel receiver of the property and assets of said defendant C. H. Fargo & Co., and that said Makeel is now acting as such receiver substantially as alleged in said paragraph first of the bill of complaint; but these defendants deny that all the property of every kind of nature belonging to said defendant C. H. Fargo & Co., or in which it is interested, has been assigned and transferred to the defendants herein or levied upon by John W. Arnold, United States Marshal, under the two executions issued on judgments in favor of these defendants; and these defendants have no knowledge as to whether the said C. H. Fargo & Co., did on the tenth day of September, 1896, or for more than thirty days next prior thereto, have, own or control any property of any kind situate in the State of Illinois, other than the property mentioned in said bill of complaint, and therefore leave the complainant to make strict proof thereof.

Second: These defendants are informed and believe that the allegations in the second paragraph of said bill contained respecting the organization of the defendant corporation C. H. Fargo & Co., (which will be commonly hereafter in this answer referred to as "said corporation) are substantially true, except the allegations that the certificate of incorporation was not filed according to law in the

Answer of U. S. Rubber Co. and L. Candee & Co. filed Oct. 6, 1896.

recorder's office of Cook County, Illinois, and was not filed at all until on or about the sixth day of October, 1891, concerning which particular allegations there defendants have no knowledge, nor have they sufficient information to enable them to form a belief. These defendants therefore neither admit nor deny the allegation respecting the filing of said certificate of incorporation in the recorder's office, but leave the complainants to make such proof thereof, if material, as the complainants shall be advised; and these defendants admit the truth of the other allegations in said paragraph of said bill contained.

Third: These defendants are informed and believe that the
41 allegations in the third, fourth, fifth and sixth paragraphs of said bill contained are substantially true, and they therefore admit the substantial truth thereof.

Fourth: These defendants deny the truth of the allegations and each and every of them in the seventh paragraph of said bill contained.

Fifth: These defendants deny the truth of the allegations in the eighth paragraph of said bill contained as said allegations are therein made and stated. Respecting the subject matter of said allegations, these defendants say that in the month of December, 1895, it was believed by the officers and stockholders of said corporation, C. H. Fargo & Co., that said corporation possessed assets largely in excess of its liabilities and was able and would be able to pay all its obligations in full, leaving a handsome surplus to its stockholders, but that said corporation was likely to be in need of ready money to discharge some of its liabilities which would accrue within the next few months thereafter. The stockholders and executive officers of said corporation, being Charles E. Fargo, Frank M. Fargo and Edward A. Fargo (commonly hereafter in this answer referred to as "said Fargos") had then no desire nor intention to wind up the business of said corporation, but, on the contrary, desired and intended to continue the business of said corporation and to adopt necessary measures for enabling said corporation to meet any temporary financial embarrassments it might thereafter encounter. These defendants never received knowledge or information of any conclusion or determination on the part of said corporation or its directors or officers at said time to wind up the business of said corporation. Said corporation was then indebted to defendant, United States Rubber Company upon an open account for the proceeds of consignments of merchandise in a sum

Answer of U. S. Rubber Co. and L. Candee & Co. filed Oct. 6, 1899.

between one hundred and thirty-five thousand ($135,000) dollars and one hundred forty thousand ($140,000) dollars, and was liable to the defendant, L. Candee & Company upon its notes theretofore given to said L. Candee & Company in the amount of forty-four thousand nine hundred ($44,900) dollars and interest. Said notes had been previously discounted by said L. Candee & Company, but said L. Candee & Company was liable to pay said notes to the parties with whom it had discounted them in the event that said C. H. Fargo & Co. did not pay said notes as they respectively should mature, and in case said L. Candee & Company had to pay or took up said notes it would have been entitled to recover the amount thereof from said C. H. Fargo & Co.

Sixth: These defendants deny the truth of the allegations
42 and each and every of them in the paragraph of said bill numbered "8a." Respecting the subject matter of said allegations, these defendants say as follows:

For many years business relations had existed between said corporation and one or the other of these defendants; said corporation having purchased large quantities of goods and received large consignments of goods for many years from one or the other of these defendants. These defendants had had close business relations between themselves, and at times some individual had happened to be an officer in both of these defendants, so that each of these defendants had some knowledge of the affairs of the other. In the summer of 1893, during the severe monetary stringency of that time, said corporation had been indebted to the defendant, L. Candee & Company, in a large amount of money, being over One Hundred Thousand (100,000) Dollars, and said corporation had been unable to pay said indebtedness at that time. Judgment notes were then executed to said L. Candee & Company to protect and secure said defendant in respect to said indebtedness in case said corporation, C. H. Fargo & Co., should find its embarrassments more than temporary. Said corporation succeeded in paying a considerable portion of said indebtedness thereafter from time to time, and within a few months after the giving of said judgments notes, said defendant, L. Candee & Company, cancelled and surrendered such of said judgment notes as had not been paid, and took in lieu thereof the plain notes of said corporation for the unpaid indebtedness, thereby evidencing its trust and confidence in said corporation, its affairs, condition and officers. Thereafter like business relations continued between said corporation and said defendant, L. Candee & Company, and between said corporation and

Answer of U. S. Rubber Co. and L. Candee & Co. filed Oct. 6, 1896.

said defendant, United States Rubber Company, and these defendants had seen no reason to feel any distrust or fear respecting said corporation, its officers or affairs, but these defendants continued to have confidence therein. On or about the first day of January, 1896, Mr. Charles L. Johnson, of New Haven, Connecticut, representing these defendants, came to Chicago with Mr. H. M. Sadler, Jr., who also represented the defendant, the United States Rubber Company, and assisted said Johnson, and for a few days after the arrival of said Johnson and said Sadler in Chicago conferences took place between them and said Fargos, meaning said Charles E. Fargo, said Frank M. Fargo and said Edward A. Fargo. At that time the entire capital stock of said corporation was, as these defendants are advised and believe, and as is in said bill alleged, owned and held by said Fargos, who constituted three of the seven members of the Board of Directers of said corporation,
43 the other members of said Board being persons in the employ of said corporation, to-wit: C. D. Steele, William F. Hayes, J. F. Byrnes and Joseph A. Diederich. Said Fargos discussed with said Johnson and said Sadler the condition and prospects of said corporation and its indebtedness to these defendants, representing that said corporation was entirely solvent and possessed of ample assets for the discharge and payment of all its liabilities, with a considerable surplus, but representing further that during the next following two or three months it was likely to be pressed for ready money. Said corporation was known to these defendants to be quite largely engaged in manufacture, so that at certain seasons of the year its capital was locked up in its manufactured products and its manufacturing business, and so that it thereby required more working capital at certain seasons of the year than at others. Said Fargos requested said Johnson to cause these defendants, or one of them, to aid said corporation temporarily with a loan of funds or credit. They stated to said Johnson that they would need surely Twenty-five Thousand (25,000) Dollars to carry them through until April, and subsequently stated that to put said corporation entirely beyond embarrassment it ought to have fifty thousand (50,000) dollars. Said Johnson was unwilling to cause these defendants, or either of them, to assist said corporation as desired by said Fargos, and at first declined to do so for business reasons, although he had entire confidence in the representations of said Fargos and felt justified in such confidence by all his past experience with them. Subsequently, and after considerable discussion, said Johnson, on or about the sixth day of January, 1896, consented to induce these defendants, or one of them, to aid said corporation temporarily with money or credit

Answer of U. S. Rubber Co. and L. Candee & Co. filed Oct. 6, 1896.

to the extent of fifty thousand (50,000) dollars, upon the earnest assurances of said Fargos that such assistance could be safely rendered; that it would enable said corporation to overcome all its embarrassments, and that said corporation would probably be pushed into an unnecessary and undesirable failure without such assistance; and upon the conditions that the best available security for existing and future indebtedness should be given to the defendants by said corporation, and that said corporation and said Fargos should use all reasonable efforts to reduce the indebtedness of said corporation to its different creditors. Said Fargos offered to cause any steps to be taken necessary or material for the complete protection of these defendants, or either of them rendering such assistance, and suggested that they would reconstruct the membership of the board of directors of said corporation and place in said board four or five individuals, making a majority in said board, to be nominated by William G. Beale of the law firm of Isham, Lincoln & Beale, counsel for these defendants, so that the security to be given to these defendants could not be impaired by said Fargos without the consent of a board of directors friendly to the counsel of these defendants. The arrangement then made between said Johnson and said Fargos was promptly carried into effect, and at the instance of said Johnson the defendant, L. Candee & Company, financially aided said corporation during the next few weeks after said conferences with various sums of money amounting in the aggregate to fifty thousand (50,000) dollars, which was received and used by said corporation, and, as these defendants are informed and believe, was largely, if not wholly, applied to discharge the indebtedness of said corporation to its various creditors, including these defendants. The whole arrangement as agreed upon and as carried out, is shown with substantial accuracy and completeness, except possibly in some trifling details, by the records of a meeting of the board of directors of said corporation held January 6th, 1896, and a meeting of the stockholders of said corporation held January 8th, 1896, and of a meeting of the board of directors of said corporation held January 9th, 1896, a transcript of which records is hereto annexed, marked Exhibit "A," and is hereby referred to with like effect in all respects as if here set out at length. Said meetings appear to be and are believed by these defendants to be the only meetings of stockholders or directors of said corporation held in the years 1895 or 1896 prior to a meeting hereinafter referred to of the board of directors of said company held August 5th, 1896. In connection with the execution and delivery of the judgment notes mentioned in said records to these defendants, and in connection with the changes in the board of

Answer of U. S. Rubber Co. and L. Candee & Co., filed Oct. 6, 1 96.

directors of said corporation, the said Fargos, or some of them, dis-
tinctly insisted and stipulated that there should be no interferen
by these defendants, or by any agent or representative of these de
fendants, or either of them, or by said Beale, or by the new direct
ors to be nominated by said Beale, with the substantial managemen
and control of said corporation by said Fargos, except so far a
might be necessary for the protection of these defendants, but tha
said Fargos should be let alone and permitted to manage and carr
on the business of said corporation in their own way, precisely a
they had previously done, the board of directors continuing to ac
as previously, in accordance with their wishes, unless said Farg
or said corporation should violate or attempt to violate the cond
tions upon which said Johnson had agreed to aid said corpora
tion. It was well understood by said Fargos and by the
defendants that, with the consent of the board of director
45 judgment notes might be executed by said corporation to othe
creditors than these defendants, or judgments might be co
fessed in favor of other creditors, or other forms of preferential s
curity might be used in favor of other creditors, by means of whic
the security given and intended to be gvien to these defendant
would be destroyed or impaired, and it was for the sole purpose
preventing consent to any such action on the part of the board
directors of said corporation, and of preventing any action whic
would tend to destroy or impair the security of these defendant
that said Fargos proposed to have a majority of the board
directors nominated by said Beale. The proposal of said Farg
respecting said board of directors was acceptable to these defen
ants represented by said Johnson, and these defendants did not
any manner or to any extent exercise any voice or influence, or a
tempt to exercise any, in the selection of the persons who we
elected members of said board of directors at the instance of sa
Beale. These defendants did not know who were to be selecte
They did not make any stipulations in that behalf, and they ha
never known who were in fact selected as directors by said Beal
except as recently informed by said Beale. These defendants a
informed and believe and state the fact to be that after said jud
ment notes had been executed and deliversd to them with the a
proval and by the directions of said Fargos, and of the board
directors of said corporation as said board of directors was cons
tuted on the 6th day of January, 1896, and when it had become
sirably for the said Beale to name the persons to be elected
directors of said corporation, said Fargos, or some of them, r
quested said Beale to take such persons as far as practicable fr
his own office. Said Beale suggested that one of his nomine

Answer of U. S. Rubber Co. and L. Candee & Co., filed Oct. 6, 1896.

ught to be the secretary of said corporation, because any judg-ent notes or other papers of formal character to be at any time xecuted by said corporation for the purpose of creating a prefer-ntial security in favor of other creditors than these defendants ould naturally be signed by the president and secretary of said rporation, and he t ought matters should be so arranged that such apers could not be secretly executed without the knowledge of one f his nominees Said Beale further suggested that for similar easons one of his nominees ought to be at least nominally the reasurer of said corporation, and that to avoid complications in se of death five of the seven directors instead of four ought to be ominated by him. These suggestions of said Fargos and said eale were mutually acceptable, and accordingly, without any con-roversy, said Beale nominated five persons to be elected directors of said company at the stockholders' meeting held January 9th, 1896, and said five persons were, as shown by the records already mentioned, elected directors of said corporation at said eeting together with said Charles E. Fargo and said Frank M. argo, and subsequently one of said parties, to wit: Buell Mc-eever, was at a meeting of the board of directors held on January th, 1896, elected secretary and treasurer of said company. Four f said five persons were and are now connected with the office of id Isham, Lincoln & Beale, and the fifth, Tiffany Blake, is an ssistant in the office of the corporation counsel of the City of Chi-go, said Beale being said corporation counsel. All said persons ere selected from said offices particularly at the desire of said argos, or of some of them. It had been the general practice of id corporation for notes, drafts and ordinary contracts incidental its business to be signed only by the president, and, in order to ntinue the same course of business, and at the same time to pro-et these defendants in case of any emergency, the by-laws of said rporation were amended at the meeting of the board of directors eld January 9th, 1896, as shown by the record of said meeting. ubsequent to said meeting and until August, 1896, there was no ccasion for any action on the part of the Board of Directors of id corporation, and no meeting was held during said period, and uring said period there was no attempt on the part of said five di-ectors so nominated by said Beale, or of any or either of them, to terfere with the management or control of the affairs of said cor-oration in any way whatever, but the affairs of said corporation ere left to be controlled and managed, and they were in fact con-olled and managed during said period, wholly by said Fargos. uring said period no management or control or attempt at man-gement or control of the affairs of said corporation or interference

Answer of U. S. Rubber Co. and L. Candee & Co., filed Oct. 6, 1 96.

therewith took place on the part of these defendants, or either of them, or any person acting in any way whatever for them or in their interest, and during said period the affairs of said corporation were managed and conducted primarily and directly in the interests of said corporation and not in the interests of these defendants, or either of them. Said arrangement was entered into and was consummated on the part of these defendants wholly for the purpose of enabling said corporation to tide over its temporary embarrassments, and to get into a safe and sound financial condition so that it might continue its business successfully, and these defendants are advised and believe and so state the fact to be that said Fargo had a like purpose in connection with the arrangement, and had no other purpose.

Seventh: These defendants deny the truth of the allegations
47 indirectly made in the ninth paragraph of said bill by which said arrangement is characterized as a secret and fraudulent trust agreement, and deny that said arrangement was in any manner unlawful or improper.

Eighth: These defendants admit the substantial truth of the allegations in the tenth, eleventh, twelfth and thirteenth paragraphs of said bill contained relating to the records of meetings of stockholders and directors of said corporation herein before set forth, but for greater certainty as to the contents of said records these defendants beg leave to refer to the copies thereof attached and marked Exhibit "A" as hereinbefore stated, and to the originals of said records when produced in this Court.

Ninth: These defendants deny the truth of the allegations in the fourteenth paragraph of said bill contained, except in so far as said allegations are in accord with the statements heretofore in the sixth paragraph of this answer made by these defendants. These defendants admit that four of said directors nominated by said Beale were in the employ of the law firm of Isham, Lincoln & Beale, and that said law firm are now and for some years have been the counsel in Chicago of these defendants, but they say that one of said directors was not in the employ of said law firm but was and is an assistant Corporation Counsel of the City of Chicago. These defendants admit that none of said five directors held or owned any share of stock in said corporation or had any interest in said corporation, but they deny that said five persons elected to be directors, or any or either of them, were elected solely as agents or representatives of these defendants, or were or are or have ever been

nder the control and direction of these defendants. These defendants deny that they caused said five persons to be elected as directors instead of these defendants for the purpose and the end in said paragraph of said bill named, or for any purpose, or that they caused said five persons in any way whatever to be so elected directors. These defendants deny that in fact or in equity, or in any way whatever, the election of said five persons, or of any or either of them, was an election of these defendants, or of either of them, to membership in the Board of Directors of said corporation. These defendants say that for a long time prior to the sixth day of January 1896, the Board of Directors of said corporation had consisted of seven persons, four of whom had no stock interest whatever in said corporation: that said corporation had for a long time been actually controlled in accordance with the wishes of its three stockholders, said three Fargos; that these defendants did not name said five new directors, nor any of them, and did not make any suggestions to said Beale or to said Fargos respecting the five persons to be named by said Beale, and that no suggestion was ever made by anybody in respect to placing these defendants, or either of them, or in respect to the impossibility of placing these defendants, or either of them, in the Board of Directors of said corporation.

Tenth: These defendants deny, as alleged in the fifteenth paragraph of said bill, that there was any pretended meeting of the Board of Directors of said corporation held on the ninth day of January, 1896, at the office of said Isham, Lincoln & Beale, but they admit that an actual meeting of said Board of Directors was held on said date at which proceedings were had substantially as in said paragraph fifteen of said bill set forth. These defendants deny that said Buell McKeever acted as secretary and treasurer of said corporation merely as agent and employe of these defendants and subject to their control, and that the acts of said McKeever have been in fact the acts of these defendants, and that these defendants have in fact been through said McKeever, the secretary and treasurer of said corporation, since said ninth day of January, 1895. On the contrary, these defendants aver that said McKeever has never had any relations to these defendants, or to either of them; that he has never been in their employ or in the employ of either of them; and that he has never been their agent or the agent of either of them in any capacity whatever. These defendants further say that, after his election as secretary and treasurer of said corporation, said McKeever never had any actual duties to perform in connection with said corporation as such secretary and treasurer, and was never

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called upon to perform any such duties until on or about the fifth day of August, 1896. From and after said ninth day of January, 1896, on which date said McKeever attended a meeting of the Board of Directors of said corporation, said McKeever did not handle any moneys or papers, or sign any checks or other papers or instruments on behalf of said corporation, and was never called upon to do so, but all the affairs of said corporation were conducted and managed by said Fargos and by the employes of said corporation, and the sole purpose in electing said McKeever secretary and treasurer was, as hereinbefore stated, to prevent the execution on behalf of said corporation of any instrument prejudicial to the securities of these defendants which might require the signature of the secretary or the treasurer of said corporation, without the consent and acquiescence of said McKeever, to the end that the security given to these defendants by said corporation should not be impaired,

49 Eleventh: These defendants deny the truth of the allegations and every of them in the sixteenth paragraph of said bill contained.

Twelfth: These defendants admit the truth of the allegations in the seventeenth paragraph of said amended bill contained respecting the resolution of the Board of Directors passed January 9th, 1896, amending the by laws of said corporation.

Thirteenth: These defendants deny the truth of the allegations and each and every of them in the eighteenth and nineteenth paragraphs of said bill contained, and respecting the subject matter of said allegations so far as known to these defendants, these defendants refer to their statements heretofore in the sixth paragraph of this answer contained as setting forth the actual facts.

Fourteenth: These defendants admit the substantial truth of the allegations in the twentieth paragraph contained.

Fifteenth: These defendants deny the truth of the allegations in the twenty-first paragraph of said bill contained to the effect that said corporation, C. H. Fargo & Co., under the alleged management and control of these defendants continued after the nineth day of January, to become more and more embarrassed and insolvent until on or about the fifth day of August, 1896, and that the officers of said corporation and of the defendants concluded on or about that date that it would be impracticable to further continue the op-

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tion of an alleged fraudulent agreement between said corpora- n and these defendants, and impracticable to enable said corpo- ion to further obtain merchandise on credit, and deemed it de- ible to forthwith wind up the business of said C. H. Fargo & , and appropriate to themselves substantially all the remaining ets of said C. H. Fargo & Co. in final consummation of said al- ed fraudulent agreement; and that these defendants and the cers of said corporation then proceeded to consummate and carry their design as in said paragraph alleged. Each and every of foregoing allegations these defendants deny. These defendants informed and believe it to be true that on or about August 5th, 96, said C. H. Fargo & Co. was indebted to the defendant, the tropolitan National Bank, in the sum of about Forty Thousand ,000) Dollars, but they deny that they entered into a fraudulent eement of any kind with said Bank for the purpose of securing session of all the property and assets of C. H. Fargo & Co., thereby obtaining unlawful preferences, and deny that said Bank and these defendants caused the resolutions of C. H. Fargo & Co. set forth in said paragraph to be adopted, and deny that said Bank agreed to pay or did pay on or about gust 5th, 1896, to these defendants or to either of them or to person, firm or corporation under their orders, control or di- tion the sum of Ten Thousand (10,000) Dollars or any other sum any purpose whatever, and deny that the Ten Thousand (10,000) llars advanced by said Bank on said date was advanced to or for se and benefit of any person, firm or corporation other than defendant C. H. Fargo & Co. With respect to the allegations ve denied and the other allegations of said paragraph, these de- dants say as follows:

After the giving of the judgment notes to these defendants in nuary, 1896, as hereinbefore set forth, these defendants had no son to suppose that said corporation was not carrying on its siness free from any particular embarrassment down to about the st of August, 1896. Had these defendants felt any apprehension entertained any suspicions about the substantial solvency of said rporation during said period they would have caused their judg- ent notes to be put into judgment without delay as they were en- rely at liberty to do at any time. These defendants did in fact derstand that said corporation was doing fairly well in view of e general financial depression existing throughout the country d the bad condition of business. Said corporation had reduced s indebtedness to these defendants by a little more than the mount of the loan made to it as aforesaid in January, 1896, and as understood by these defendants to have been gradually re-

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ducing its indebtedness to its other creditors out of the proceeds of sales of merchandise and its collections of accounts. About the first of August, 1896, said Charles E. Fargo, President of said corporation, informed these defendants that said corporation was likely to have trouble during the said month of August, and he expressed a desire to have some security given by said corporation to the Metropolitan National Bank of Chicago, upon the indebtedness of said corporation to said Bank, in order, partially at least, that he might be able to apply to said Bank for temporary assistance to said corporation if any such assistance should be needed by it. Said Fargo then represented to said Sadler, the representative of these defendants, that said corporation had assets to the extent of about Five Hundred Fifty Thousand (550,000) Dollars, being an amount largely in excess of its stated liabilities, and he gave a memorandum to that effect to said Sadler. These defendants acquiesced in the desire of said Fargo that some security should be given to said Metropolitan Natianal Bank of Chicago, and relied confidently upon the assurances and representations of

51 said Fargo respecting the financial condition of said corporation.

These defendants do not here mean to charge said Fargo with intentionally misrepresenting the condition of said corporation or the amount of its assets, but they do aver that, in their judgment, his opinion of the value of said assets was too high. These defendants are informed and believe that the indebtedness of said corporation to said Bank was increased to the sum of Fifty Thousand (50,000) Dollars on or about August 6th, 1896, by the advance said Bank to the said corporation of the sum of Ten Thousand (10,000) Dollars, to secure which said Bank took the promissory note of said corporation for that sum; but these defendants aver that said Ten Thousand (10,000) Dollars was paid to and for the use and benefit of said corporation through its President, Charles E. Fargo. On August 5th 1896, a meeting of the Board of Directors of said corporation was held and two resolutions were passed: one authorizing the President of said corporation to secure the indebtedness to said Bank by giving judgment notes therefor, and the other authorizing the President and Vice-President to negotiate with said bank for the sale of the company's real estate and buildings at Dixon, Illinois, in full satisfaction of twenty-five thousand (25,000) dollars of said indebtedness, and if such negotiations were successful to execute a deed to said real estate and buildings, upon the said bank cancelling and delivering up twenty-five thousand (25,000) dollars of the company's notes. The proceedings at said meeting containing the said resolutions are fully set forth in the minutes of said meeting shown upon the corporation records,

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true copy of which minutes is hereto attached as part of "Exhibit B," to which these defendants refer as if fully set forth herein. On or about August 6th, 1896, the president and vice-president of said corporation did sell and convey to said bank as authorized by resolution of August 5th its real estate and buildings at Dixon, Illinois, for the sum of twenty-five thousand (25,000) which was paid by the act of said bank in then and there cancelling and delivering up to the president and vice-president of said corporation twenty-five thousand (25,000) dollars of its notes, leaving a balance due from said corporation to said bank of twenty-five thousand (25,000) dollars, to secure which the bank held the judgment notes of said corporation for that sum. On said August 6th, 1896, these defendants came to the conclusion that their judgment notes ought to be put into judgment for the amount of the indebtedness then respectively due to them, absolutely or contingently, as nearly as such indebtedness could be ascertained, and that the said corporation was not in a position to further carry on its business. Pursuant to the agreement of said corporation January 6th, 1896, as shown in a resolution of the board of directors at the meeting held on that date (to the effect that whenever it should be found necessary for the corporation to suspend business it would assign and transfer for the benefit of these defendants all its book accounts, credits, bills receivable and choses in action) the stockholders of said corporation on said August 6th, 1896, held a meeting and authorized the president to assign and transfer all the outstanding book accounts and choses in action belonging to said corporation to the United States Rubber Company as security for the indebtedness to these defendants, the proceedings of which meeting are fully set forth in "Exhibit B," which is a true copy of the records of said meeting upon the books of said corporation. Thereupon, the president of said corporation did execute and deliver to the United States Rubber Company a general assignment of all its book accounts, credits and choses in action as security for its indebtedness to these defendants, with full power to collect and receipt for said accounts, and delivered to Isham, Lincoln & Beale, solicitors for these defendants, many of its books evidencing such accounts. These defendants admit that on said August 6, 1896, they entered into an agreement with said bank through their respective counsel to waive as to said bank their footing of preference so that said bank might share in the ultimate proceeds of the property of said corporation which was about to be levied upon by these defendants, and of said account and of said real estate and buildings at Dixon conveyed to said bank as aforesaid in propor-

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tion as their respective claims against said corporation bore to the total amount of said proceeds; but these defendants.....
.....deny that said agreement was in any way fraudulent or that it was designed or had the effect to injure said corporation or its other creditors. At that time these defendants and said bank supposed that the assets of said corporation were sufficient to satisfy their claims in full, and said agreement was made by them solely for the purpose of preventing conflict between said bank and these defendants respecting priorities of lien and the custody, care of and sale of the property, in the belief and to the end that such accordance would so conserve said assets that the largest possible amount would be realized therefrom.

On said August 6th, 1896, the defendant United States Rubber Company took judgment in this court upon the judgment note then held by it for the sum of one hundred forty-five thousand four hundred (145,400) dollars, the defendant L. Candee & Company

53 took judgment in this court upon the judgment note then held by it (the other judgment note given to it on January 6, 1896 having been previously paid and canceled) for the sum of thirty-eight thousand three hundred (38,300) dollars, and upon said date these defendants caused executions to be issued upon their judgments respectively and to be placed in the hands of the United States marshal for said district, and said marshal thereupon levied said executions upon the physical and tangible property of said corporation, nearly all of which was situated in two places, to wit, in a store in Chicago and in a factory in Dixon, Illinois, both in said district. Upon the same date the defendant The Metropolitan National Bank took judgment upon its judgment note in the Circuit Court of Cook County, Illinois, for the sum of twenty-five thousand five hundred (25,500) dollars, caused execution thereon to be issued and delivered to the sheriff of said Cook County who, thereupon levied upon said property subject to the former levies made by said marshal under said executions from this court. Said marshal duly advertised said property for sale in said two places, and, at the date of the preparation of this answer, the property of said corporation in both said places has been sold by said marshal. The property in said store was sold to the well-known Chicago business concern or establishment called "The Fair" for the sum of sixty-five thousand (65,000) dollars, and the property at Dixon was sold to defendant, the United States Rubber Company, for fifteen thousand five hundred (15,500) dollars. The property bought by said defendant, United States Rubber Company, is still held by said defendant Rubber Company, which has not been able to dispose of the same satisfactorily. Until within

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ew days before the filing of this answer these defendants supposed ist the aggregate face amount of said accounts was about two hun- red thousand (200,000) dollars, and they so stated in their original nswer filed in the Circuit Court of Cook County in the case where- n said complainant Makeel was appointed receiver of said corpora- n, but upon marshaling and footing up said accounts it now ap- ears and these defendants therefore state the fact to be that said ccounts are constituted as follows:

Current live accounts aggregating about.....	69,500
Old and stale merchandise accounts aggregating about.	27,042
Old accounts for money loaned aggregating about....	31,967
Total.....	$128,499

What proportion of said live accounts are collectible these defendants do not know, but they have been able to collect at the time of the preparation of this answer only about twenty thousand (20,000) dollars upon said accounts, although they ent out notices of the assignment of said accounts almost immedi- ely after such assignment. As to the other accounts above speci- ed, to wit, the stale merchandise accounts and old accounts for oney loaned, these defendants are informed and believe that they e practically worthless and uncollectible. The entry of said judg- ents and all action thereon, and the assignment of said accounts nd all things in connection therewith, were solely for the p..rpose f protecting these defendants in respect to the indebtedness then e them from the said corporation, either absolutely or contin- ently, and nothing whatever has been done by these defendants, r with the knowledge of these defendants for the purpose of aiding r benefiting said corporation or said Fargos, or for the pur- se or design of delaying or hindering other creditors of said cor- oration. Said judgment notes were given as collateral security to ese defendants, and they were not the principal evidences of in- ebtedness. When the judgments were entered it became necessary ascertain and compute the exact indebtedness, absolute and con- ingent, to each of these defendants. This involved the ascertain- ent of rebates and of counter charges and of computation of terest, so that it was not practicable for these defendants to be ntirely accurate respecting said indebtedness on the date when said dgments were entered. But said judgments were intended to be ken for the actual and true indebtedness due these defendants om said corporation absolutely or contingently, and were taken r such actual and true indebtedness as nearly as it could then be

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ascertained, and said judgment will be found to vary in only small and unimportant amounts from the exact amounts so due these defendants on said date. These defendants have always considered said judgments as entered subject to correction in favor of said corporation if any errors in computations should be found, and have never intended to claim more than the amount actually due them and each of them respectively, upon absolute or contingent indebtedness. At the date of the entry of said judgments some of the notes of said corporation constituting the primary evidences of its debtedness to these defendants—plain notes to which said judgment notes were collateral security—had been discounted and were in the hands of persons to whom these defendants or either of them having endorsed and guaranteed the same, were liable for the prompt payment thereof in case of the inability of said corporation to pay the same; and the liability of said corporation to these defendants respectively with respect to such discounted notes consti-
55 tutes the indebtedness which is herein referred to as contingent.

At the time said Judgment notes were executed and delivered and also about three months afterwards, it was expressly agreed and understood by and between said corporation and said Johnson and Sadler representing these defendants that said judgment notes should be held, and if necessary used, to secure these defendants with respect to, and to protect them against, any contingent liability upon said discounted notes—the said corporation well knowing at the time of the intention of the defendants to discount and use the same as they might desire in the ordinary course of business. Within a few days after the entry of said judgments, and prior to the filing of the bill herein, each of these defendants took up and repossessed itself of such of said notes as it had discounted and became the absolute owner and payee thereof and still holds the same and these defendants therefore state that before and at the time of the filing of the bill of complaint herein the entire indebtedness of said corporation secured by said judgment notes and the judgment entered thereon was absolute and direct indebtedness to these defendants respectively. These defendants respectively have since the entry of said judgments computed the exact amounts due to them from said corporation, and they now aver that on said August 6th 1896, there was due from said corporation to the defendant United States Rubber Company upon plain notes now held by the defendant and secured by the judgment note upon which judgment was entered in its favor as aforesaid, after allowing to said corporation all its just deductions, credits and set offs the sum of One Hundred Forty Thousand Six Hundred Seventy one and one hundredths (140,671.01) Dollars; and that on said date there was due from

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id corporation to the defendant, L. Candee & Company, upon the ain notes held by that defendant which were secured by the judg- ent note upon which judgment was entered in its favor as afore- id, after allowing to said corporation all its just deductions, credits d set offs, the sum of Thirty-six Thousand Five Hundred Thirty 6,530) Dollars; and that there is now due from said corporation these defendants upon said judgments respectively, after adding attorneys' fees as provided for in the judgment notes, as fol- ws:

pon judgment in favor of United States Rubber Co., $141,171.01.
" " " " " L. Candee & Company, $36,830.00,
gether with lawful interest thereon from August 6th, 1896, sub- t to the proper credits for the amount collected from the assigned k accounts, and the amount bid for the property purchased by them at Dixon as elsewhere herein stated. With respect to said judgment in favor of L. Candee & Company, these defend- ants aver that the indebtedness evidenced thereby is the balance to said defendant of the Fifty Thousand (50,000) Dollars ad- nced to said corporation in January, 1896. The other judgment te for the sum of Forty-four Thousand Nine Hundred (44,900) llars given to L Candee & Company on January 6th, 1896, to ure a then contingent liability to that defendant was some months bsequently delivered up to said corporation and cancelled, said rporation having duly taken up and paid its notes evidencing such ntingent liability.

These defendants have no knowledge, nor have they sufficient in- rmation to form a belief respecting the various debts due from id corporation to its other creditors. They are informed and be- ve, however, and so state the fact to be, that the indebtedness of id corporation to its creditors other than these defendants, was re- ced in amount between January 6th, 1896, and August 6th, 96; and that said corporation on August 6th, 1896, had on hand s merchandise and assets than it had on January 6th, 1896, or at y time between said dates.

Sixteenth. These defendants admit the allegations in the Twen- second paragraph of said bill contained respecting the nature and ation of the property of said corporation, the levy of executions reon, the taking possession thereof by said Marshal, and the ad- rtising of said property for sale, and the sale thereof, but they e not definitely informed as to the actual market value of said operty except as evidenced by the prices brought at said sales, and

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they therefore neither admit or deny the allegations in that behalf but leave the complainant to make such proof thereof as it may be advised. These defendants deny that said property was sold under said executions at a great sacrifice, but aver that it brought as good a price as could have been expected at a sale of that kind under the present financial conditions of business. These defendants deny that the Fifteen Thousand Five Hundred (15,500) Dollars which the defendant, United States Rubber Company, bid for the property at Dixon, Illinois, is in the hands of said United States Marshal, and state that the United States Rubber Company expects to pay the same by receiving a credit to that amount upon its said execution. These defendants admit that on or about August 6th 1896, the real estate and factory at Dixon, Illinois, belonging to said corporation, was conveyed by said corporation to The Metropolitan National Bank, but as to the legal description of such real estate these defendants are not informed, and ask leave to refer to the conveyances themselves. These defendants deny the
57 allegation contained in said Twenty-second paragraph, that the said conveyance was fraudulent and void.

Seventeenth: These defendants deny the allegations and each and every of them in the twenty-third, twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh and twenty-eighth paragraphs of said bill contained.

Eighteenth: These defendants admit that the book accounts assigned by said corporation to the defendant United States Rubber Company are now being collected as alleged in the twenty-ninth paragraph of said bill of complaint, but they deny that said United States Rubber Company ought to be ordered by this Court to assign and turn over to a Receiver said book accounts, papers, documents and evidences of indebtedness so received by United States Rubber Company, together with moneys which it has already collected from said accounts, and deny that said book accounts amount in value to over One Hundred Thousand (100,000) Dollars.

Nineteenth: These defendants have no knowledge nor have they sufficient information to form a belief of the truth of the allegations set forth in the thirtieth paragraph of the bill of complaint and these defendants therefore leave the complainant to make strict proof thereof.

Twentieth: With respect to the allegations in the thirty-first paragraph of said bill of complaint, these defendants admit the

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id United States Rubber Company and said Marshal and said nk refuse to assign, convey and deliver the property held by em respectively to said Receiver Frank E. Makeel, and that they ny the right of said Makeel to the possession thereof; and these efendants aver that the only reason said Makeel as Receiver has en unable to reach or obtain possession of said property is that e has not established, nor can he establish, any legal or equitable le thereto.

Twenty-first: These defendants deny the allegations and each d every of them in the thirty-second paragraph of said bill of mplaint contained:

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill arged, without this that there is any other matter, cause or thing the complainant's said bill of complaint contained, material or essary, for these defendants to make answer unto and not herein d hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct; and pray to be hence dismissed with their asonable costs and charges in this behalf most wrongfully sustained.

UNITED STATES RUBBER COMPANY and
L. CANDEE & COMPANY,
By ISHAM, LINCOLN & BEALE,
Their Solicitors.

ISHAM, LINCOLN & BEALE,
Solicitors and of Counsel for said Defendants.

United States of America,
ate and Northern District of Illinois, } ss.
County of Cook.

Charles B. Allen, being duly sworn, says, that he is a resident of id State, and District and County, and that he is the business ent and representative of the United States Rubber Company, d of L. Candee & Company, in the City of Chicago, in said istrict and County; that he has read the foregoing answer on beh lf of said United States Rubber Company, and said L. Candee & mpany to the bill of complaint of the American Oak Leather mpany, and that he knows the contents of said answer; that only

a part of the matters and things in said answer set forth and state
are within the personal knowledge of this affiant, because some
such matters and things relate to transactions with which this affia
has had no direct connection personally, but this affiant has h
occasion to become well informed through his business relations, b
inquiries, and his investigations as to all the matters and things
said answer contained, not so known to him of his own knowledg
that he is informed and believes that no one person has pers
knowledge of all the matters and things in said answer set for
and stated, unless, perhaps, William G. Beale, one of the com
of said companies, has such knowledge; that this affiant has d
rived a large portion of his information respecting said matters a
things not so personally known to him, from said Beale, who h
given this affiant information respecting all the matters and thin
set forth in said answer, not otherwise known to this affiant; th
as a result of his business relations and of his inquiries and inv
tigations, and of the information imparted to him by s
Beale, this affiant is informed and believes that said answer
the matters and things therein set forth and contain
59 and each and every of such matters and things, are true, a
affiant accordingly says that the said answer and the matt
and things therein set forth and stated, and each and every of
matters and things are true.

(Signed) CHARLES B. ALLEN.

Subscribed and sworn to before me, this 6th day of October,
D. 1896.

(Seal.) BUELL M'KEEVER,
Notary Pub

Exhibit A—Minutes of Directors Meeting of C. H. Fargo & Co., Jan. 6, 1896.

EXHIBIT A.

Minutes of meeting of the directors of C. H. Fargo & Compa
held at the office of the Company January 6th, 1896, pursuant
notice.

Present: Charles E. Fargo, F. M. Fargo, E. A. Fargo, Wi
iam F. Hayes and Charles D. Steele. The meeting called to or
by Charles E. Fargo, President.

The President made a long statement concerning the pres
financial condition of the Company and its necessity for rea
money to meet pressing engagements, and informed the meeti
that Mr. Charles L. Johnson, representing the United States Re

Exhibit A. Minutes of Directors' Meeting of C. T. Fargo & Co., Jan. 6, 1896.

ber Company and L. Candee & Company, two of the largest creditors of this Company, had been here for several days and in consultation with him, the President respecting the indebtedness to those companies. The President further stated that he had applied to Mr. Johnson for financial assistance and had made the arrangement, subject to the approval of the Company, which fully appears in the resolution which he was about to introduce. The President thereupon offered the following resolution, to-wit:

"Whereas, this Company is indebted to a large amount and is in need of present financial assistance to continue its business although it has assets (unavailable, however, for present necessities) largely in excess of its liabilities; and

"Whereas, the United States Rubber Company, a corporation, and L. Candee & Company, a corporation, are among the largest creditors of this Company, that is to say: this Company is indebted to the United States Rubber Company upon open account for the proceeds of consignments in a sum between one hundred and thirty-five thousand ($135,000) dollars and one hundred and forty thousand ($140,000) dollars, the exact amount of which cannot be so stated with accuracy, and this Company is also indebted upon its notes heretofore given to L. Candee & Company to the amount of forty-four thousand, nine hundred (44,900) dollars, and interest, upon which notes L. Candee & Company having discounted the same, is liable as guarantor or endorser to the present holders thereof; and

"Whereas, this company has applied to Charles L. Johnson, representing the United States Rubber Company and L. Candee & Company, for the assistance necessary in the present emergency, and said Johnson is willing to render the same by procuring to be advanced to this Company the sum of fifty thousand (50,000) dollars as follows: Ten thousand (10,000) dollars on this date, ten thousand (10,000) dollars on or before January 10th, 1896, ten thousand (10,000) dollars on or before January 13th, 1896, ten thousand (10,000) dollars on or before January 16th, 1896, and the remaining ten thousand (10,000) dollars on or before January 20th, 1896, but only upon the conditions that said money shall be used to reduce the indebtedness of this Company as it matures, and that the United States Rubber Company and L. Candee & Company which Mr. Johnson represents shall be fully protected and secured and be made preferred creditors to the extent of the total present and future liability, absolute or contingent, of this Company to said

Exhibit A—Minutes of Directors Meeting of C. H. Fargo & Co., Jan. 6 1896.

Rubber Comp[any] [s], and each of them, in the particular manner hereinafter se[t forth and,

"Whereas, it is the belief of this Board that with the ass[istance] ance of said Johnson, as aforesaid, this Company can overc[ome] its present difficulties, and this Board is therefore willing agree to the conditions as required by said Johnson in consid[eration] tion of his promises to furnish, and of his furnishing such ass[istance] ance.

"Now therefore be it resolved that upon said Johnson's f[urnishing] nishing or agreeing to furnish, in the manner above mentio[ned] the sum of Fifty Thousand (50,000) Dollars to this Company, [the] officers of the Company be and are hereby authorized and [em]powered to execute and deliver to said Johnson the several [promissory] notes of this Company aggregating Fifty-one Thousand F[ive] Hundred (51,500) Dollars payable to L. Candee & Comp[any] which said Johnson desires to use for the purpose of discount; [and] that the officers of this Company are further empowered to [exe]cute and deliver to said Johnson its three (3) judgment notes [in] the amounts and for the purposes following: one for One H[un]dred and Forty Thousand (140,000) Dollars payable to the Un[ited] States Rubber Company, to secure our said indebtedness to [the] 61 Company, one for Forty-five Thousand (45,000) Dollars, [pay]able to L. Candee & Company, to protect and secure that C[om]pany against its liability as guarantor or endorser upon the n[otes] heretofore given to it by this Company aggregating about Fo[rty] four Thousand Nine Hundred (44,900) Dollars, and one for Fi[fty] one Thousand Five Hundred (51,500) Dollars, payable to Candee & Company as further security to that Company for Fifty Thousand (50,000) Dollars which Mr. Johnson agrees to [pro]cure to be advanced by that Company to this Company, as af[ore]said, with interest thereon, and also to protect and secure L. Can[dee] & Company against its liability upon the plain promissory n[otes] above authorized to be given as evidence of such advance—each said judgment notes to be payable on demand and to bear inte[rest] at six (6) per cent. per annum.

"And Be It Resolved that in further consideration of the said vance of Fifty Thousand (50,000) Dollars to this Company in manner aforesaid and in compliance with the requirement of Johnson which he makes an express condition of said advance, Board of Directors and this Company hereby promises and ag[rees] that whenever it shall be found necessary for this Company to

Exhibit A—Minutes of Directors' Meeting of C. H. Fargo & Co., Jan. 6, 1896.

...ral business, it will then assign and transfer to said Johnson for ...d Rubber Companies as additional securities for their claims ...gainst this Company, all such book accounts, credits, bills receiv...le, and choses in action as shall be then owned by or due to this ...ompany."

Upon motion of the President, Mr. Charles E. Fargo, seconded ... F. M. Fargo, and after a full discussion of its subject matter, ...e foregoing resolution was unanimously adopted. It was there...on stated by the President that Mr. Johnson was ready to pay ...e first Ten Thousand (10,000) Dollars mentioned in said resolu...on immediately, and that he, the President, would have the notes ...ove authorized, executed and delivered at once, as Mr. Johnson ...sired to take the afternoon train for New York.

There being no further business before the meeting, upon motion ...Mr. F. M. Fargo, seconded by Mr. Charles D. Steele, the meet...g adjourned.

(Signed) CHAS. E. FARGO,
F. M. FARGO,
E. A. FARGO,
W. F. HAYES,
C. D. STEELE.

Jan'y 6th, 1896.

Minutes of Stockholders Meeting of C. H. Fargo & Co., Jan. 6, 1896.

Minutes of a stockholders meeting of C. H. Fargo & Company, held by agreement of all of the stockholders at the office ...the company, this 8th day of Jan., 1896.

Present: Charles E. Fargo, owning 1,373 shares of stock; F. ... Fargo, owning 1,295 shares of stock, and E. A. Fargo, owning ...2 shares of stock,—all of the capital stock of the company thus ...ng represented at the meeting.

The meeting was called to order by Charles E. Fargo, President ...the company, who stated that its object was to consider the trans...tion between the board of directors of this company and Charles ... Johnson, representing the United States Rubber Company and ... Candee & Company, creditors of this corporation, as fully set ...th in the minutes of the director's meeting held on January 6th, ...96, whereupon the minutes of said director's meeting were read ...d the resolution of the directors respecting the matter in question ...ly discussed.

Exhibit A—Minutes of Stockholders Meeting of C. H. Fargo & Co., Jan. 8, 1896

Mr. C. E. Fargo thereupon introduced the following resolution and moved that the same be adopted:

"Resolved, that the resolution of the board of directors passed at their meeting held January 6th, 1896, and the action of the officers of the company pursuant thereto in executing the judgment notes and in carrying out the arrangement made respecting the claims of the United States Rubber Company and L. Candee & Company against this company, be and the same are hereby authorized, confirmed and ratified."

Said resolution was seconded by Mr. F. M. Fargo and was unanimously adopted, every share of stock having been cast in favor of the same.

There being no further business before the meeting, upon motion of Mr. Charles E. Fargo, seconded by Mr. E. A. Fargo, the meeting adjourned.

(Signed) CHAS. E. FARGO.
F. M. FARGO.
E. A. FARGO.

Jan'y 8th, 1896.

Minutes of Stockholders Annual Meeting, Jan. 9, 1896.

Minutes of the annual meeting of the stockholders of C. H. Fargo & Company, held at the office of the company on January 9th, 1896, at two o'lock P. M. pursuant to adjournment from the second Tuesday in December, 1895.

63 Present: Charles E. Fargo, owning 1,373 shares of stock; F. M. Fargo, owning 1,295 shares of stock; and E. A. Fargo owning 1,332 shares of stock—all of the capital stock of the company thus being represented at the meeting.

Mr. Charles E. Fargo, the president of the company, called the meeting to order and stated that the first business before the meeting was the annual election of the board of directors for the ensuing year.

Thereupon, E. A. Fargo nominated George C. Madison, Tiffany Blake, Buell McKeever, Frederick B. Fuller, Charles E. Fargo, F. M. Fargo and Gilbert E. Porter to constitute the full board of directors for the ensuing year. There being no other nominations, a vote was duly taken and all the stock of the company—4,000 shares—was cast in favor of each of said nominees. Whereupon, George

Madison, Tiffany Blake, Buell McKeever, Frederick B. Fuller, Charles E. Fargo, F. M. Fargo and Gilbert E. Porter were duly declared elected directors of the company for the ensuing year. Minutes of Stockholders Annual Meeting, Jan. 9, 1896.

There being no other business before the meeting, on motion of E. A. Fargo, seconded by F. M. Fargo, the meeting adjourned.

(Signed) CHAS. E. FARGO,
F. M. FARGO,
E. A. FARGO.

Minutes of the annual meeting of the board of directors of C. H. Fargo & Company, held at Room 718, 184 La Salle Street, Chicago, on January 9th, 1896, at 3:30 P. M. Minutes of Directors Annual Meeting, Jan. 9, 1896.

Present: Charles E. Fargo, F. M. Fargo, Buell McKeever, Tiffany Blake, George C. Madison, Frederic B. Fuller and Gilbert E. Porter, being the full board of directors.

Charles E. Fargo, the president of the company, called the meeting to order and stated that the first business to be transacted was the election of officers of the company for the ensuing year; and thereupon the board proceeded to the election of officers.

Upon motion of Gilbert E. Porter, and seconded by Frederic B. Fuller, Mr. Charles E. Fargo was unanimously declared re-elected president of the company for the ensuing year.

Upon motion of Gilbert E. Porter, seconded by Frederick B. Fuller, Mr. F. M. Fargo was unanimously re-elected vice-president of the company for the ensuing year.

It being then stated by the president that it was desirable to have the offices of secretary and treasurer of the company filled by one person, Mr. Buell McKeever, upon motion of the president, seconded by Mr. F. M Fargo, was unanimously declared elected to fill the offices of secretary and treasurer during the ensuing year.

Mr. Porter then offered and moved for the adoption of the following resolution, to-wit:

"Resolved, that Section 3 of Article 4 of the By-Laws of this company as passed on January 31st, 1890, be and the same is hereby amended so that said section 3 of article 4 shall read as follows, to-wit:

Minutes of Directors Annual Meeting, Jan. 9, 1896.

"The President, or in his absence the Vice-President, shall ... empowered to sign and endorse ordinary promissory notes, and ... make and execute contracts, drafts and checks, for the purpose ... carrying on the usual and necessary business of the company; ... no officer or officers of the company shall have the power to sig... make or execute any mortgage, warrant of attorney to confess jud... ment, contract or other instrument in writing having the effect ... create a lien or charge, or possibility thereof, upon the proper... and assets of the company or any part thereof, or having the effe... to give any creditor or creditors of the company any lien, charge ... security upon said property and assets or any part thereof, exce... pursuant to the special authority of the board of directors."

The resolution having been seconded by Mr. F. M. Fargo, ... put to a vote and unanimously adopted by the board.

There being no further business before the meeting, upon moti... of Mr. Fuller, seconded by Mr. McKeever, the board adjourn... subject to call.

(Signed) BUELL McKEEVER,
Secretary.
TIFFANY BLAKE.
FREDERICK B. FULLER.
GILBERT E. PORTER.
GEORGE E. MADISON.

Jan. 9th, 1896

EXHIBIT B.

Exhibit B. Minutes of Special Meeting of Directors of C. H. Fargo & Co., Aug 5, 1896.

Minutes of a special meeting of the Board of Directors of C. H. Fargo and Company, held at Room 718, 184 La Salle Street, Chicago, on August 5th, 1896, at 2 p. m.

65 Present: Charles E. Fargo, F. M. Fargo, Tiffany Blake, George C. Madison and Gilbert E. Porter.

On motion of Mr. Blake, Mr. George C. Madison was elected Secretary of the meeting.

The President then stated that there were now present a majority of the Board of Directors, which majority represented by ownership a majority of the capital stock of the Company, and therefore under the By-Laws, constituted a quorum for the transaction of business. He said that he had called the meeting for the purpose

Exhibit B—Minutes of Special Meeting of Directors of C. H. Fargo & Co., Aug. 5, 1886.

considering the question of further securing the indebtedness of s Company to the Metropolitan National Bank of Chicago, and at, in his judgment, it was desirable to secure the same by giving dgment notes of the Company in place of the plain notes now held said Bank. The President thereupon moved the adoption of the llowing resolution:

"Resolved that the President of this Company be and he is hereby uthorized to execute and deliver notes of the Company containing arrants of attorney to confess judgment, payable to the Metroolitan National Bank, for the aggregate sum of Fifty Thousand 5,000) Dollars in place of the plain notes of this Company now ld by said Bank; provided, however, that the President of the mpany shall make such terms respecting the use by the Bank of d judgment notes as shall prevent said notes, or the judgments to sued thereon, from becoming liens upon any of the assets of s Company prior or superior to, or having a preference over, dgments which may hereafter be entered upon the judgment notes retofore given to the United States Rubber Company and L. wlee and Company respectively."

The motion was seconded by Mr. Gilbert E. Porter and, upon a te being taken, the resolution was unanimously adopted.

Thereupon the president stated that he had begun some negotiaons with the bank for the sale of this Company to it of the ounds and building of the Company at Dixon, Illinois, in full tisfaction of twenty five thousand (25,000) dollars of the inebtedness of this Company to said bank, and that in his judgment would be wise for the Company to consummate said sale if possi-. He thereupon offered and moved the adoption of the following solution.

"Resolved, that the President and Vice-President of this Comny be and they are hereby authorized to negotiate with the Metropolitan National Bank for the sale and transfer to it of the Company's real estate and buildings at Dixon, Illinois, in full satisfaction of twenty-five thousand (25,000) Dollars of the ebtedness of this Company to said bank, and if such negotiations e successful, to execute and deliver to said bank a warranty deed such real estate and buildings in consideration of said bank's ncelling and delivering up to this Company Twenty-five Thousand 5,000) of the Company's notes now held or to be held by it."

Exhibit B--Minutes of Special Meeting of Directors of C. H. Fargo & Co., Aug. 5, 1896.

The motion was seconded by Mr. Gilbert E. Porter, and upon vote being taken, the resolution was unanimously adopted.

(Signed) GEORGE C. MADISON,
Sectry. of the Meeting.
TIFFANY BLAKE,
Director.
GILBERT E. PORTER.
CHARLES E. FARGO.
FRANK M. FARGO.

We and each of us hereby consent to the foregoing meeting and to the proceedings taken therein.

(Signed) BUELL McKEEVER.
FREDERIC B. FULLER.

Minutes of Special Meeting of Directors of C. H. Fargo & Co., Aug. 6, 1896.

Minutes of a special meeting of the Stockholders of C. H. Fargo and Company held at the office of the Company August 6th, 1896, at 2 o'clock p. m.

Present: Charles E. Fargo, owning 1,373 shares of stock; F. M. Fargo, owning 1,295 shares of stock; and E. A. Fargo, owning 1,332 shares of stock—all of the capital stock of the Company then being represented at the meeting.

Mr. Charles E. Fargo, the President of the Company, called the meeting to order and stated that the meeting was called for the purpose of taking action with reference to the assignment of the book accounts of this Company to, or for the use and benefit of, the United States Rubber Company and L. Candee and Company according to the agreement of this Company as set forth in the resolution of the Board of Directors at the directors' meeting held January 6th, 1896.

The president thereupon offered and moved the adoption of the following resolution:

"Resolved, that the president of this Company be and he is hereby authorized to assign and transfer all the outstanding book accounts and chooses in action belonging to this Company to
67 the United States Rubber Company, with power to collect and receipt for the same, as security for the indebtedness of the

Minutes of Special Meeting of Directors of C. H. Fargo & Co., Aug. 6, 1896.

mpany to said United States Rubber Company and L. Candee nd Company."

Mr. F. M. Fargo seconded the motion and the resolution was nanimously adopted, all the stock of the Company having been st in favor thereof.

The President thereupon called the attention of the meeting to a solution adopted by the Board of Directors at its meeting held on ugust 5th, 1896, authorizing the President and Vice-President of is Company to sell and transfer to the Metropolitan National Bank f Chicago, the lands and buildings of the Company at Dixon, Illiois, in consideration of the cancellation by said Bank of Twenty-ive Thousand (25,000) Dollars of the indebtedness of this Comany to it; and moved that the action of said Board of Directors specting said sale and transfer be ratified and adopted by this eeting. The motion was seconded by Mr. F. M. Fargo and nanimously adopted—all the stock of the Company being cast in vor thereof.

There being no further business before the meeting the same was djourned.

(Signed) CHAS. E. FARGO,
FRANK M. FARGO,
E. A. FARGO.

(Endorsed) Filed Oct. 6, 1896.

S. W. BURNHAM,
Clerk.

On the same day, to-wit, the sixth day of October, 1896, came nited States Rubber Company and L. Candee & Company by their licitors and filed in the clerk's office of said court their joint and veral demurrer to the Intervening Petitions of sundry creditors of e defendant, C. H. Fargo & Co. which said demurrer is in rds and figures following, to-wit:

68 United States of America, } ss.
Northern District of Illinois. }

IN THE CIRCUIT COURT OF THE UNITED STAT

For the Northern District of Illinois.

In Chancery.

The American Oak Leather Company, a Corporation, etc.,
vs.
C. H. Fargo & Co., a Corporation, etc., United States Rubber Company, L. Candee and Company, John W. Arnold, United States Marshal, and Metropolitan National Bank of Chicago. | General Numbe

Demurrer of U. S. Rubber Co. and Candee & Co., filed Oct. 6, 1896.

The joint and several demurrer of the United States Rubb pany and L. Candee and Company, defendants, to the inte petition of sundry alleged creditors of the defendant C. H. & Co., filed herein on October 1, 1896.

These defendants demur to the said petition, and for cause of rer show, that the petitioners have not in and by their said made or stated such a case as entitles them, or either of the court of equity to any discovery or relief from or against t fendants touching these matters contained in the said peti any of such matters; and that it does not appear by said that the petitioners have obtained judgments respectively the defendant C. H. Fargo & Co., or have any lien upon th or property of said corporation.

Wherefore these defendants demur to the said petition and t matters and things therein contained, and pray the judgment honorable court whether they shall be compelled to make any or other answer thereto, and pray to be dismissed with their able costs in this behalf sustained.

UNITED STATES RUBBER COMPA
L. CANDEE & COMPANY,
By ISHAM, LINCOLN & BEAL
Their S

ISHAM, LINCOLN & BEALE,
Solrs. for said deft.

Demurrer of U. S. Rubber Co. and L. Candee & Co., filed Oct. 6, 1896.

We hereby certify that, in our opinion, the foregoing demurrer of the United States Rubber Company and L. Candee and Company, defendants, to the intervening petitions of sundry alleged creditors, is well founded in law, and proper to be filed in the above cause.

ISHAM, LINCOLN & BEALE,
Solicitors for said Defendants.

United States of America,
Northern District of Illinois,
County of Cook. } ss.

Charles B. Allen being first duly sworn on oath states that he is the business representative in Chicago of the defendants, the United States Rubber Company and L. Candee and Company; that he has heard read the foregoing demurrer to the intervening petition of sundry creditors of C. H. Fargo & Co., and that the same is not interposed for the purpose of delaying said suit or said petition or any proceedings therein.

CHARLES B. ALLEN.

Subscribed and sworn to before me this 2d day of October, A. D. 1896.

BUELL McKEEVER,
Notary Public.

[Seal.]

(Endorsed) Filed Oct. 6, 1896.

S. W. BURNHAM,
Clerk.

On the same day, to wit, the sixth day of October, 1896, came the Metropolitan National Bank by its solicitors and filed in the clerk's office of said court its demurrer to bill of complaint in said cause, which said demurrer is in the words and figures following, to wit:

70 DEMURRER OF METROPOLITAN NATIONA

United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED ST

In and for said Division.

In Chancery.

American Oak Leather Company, a corporation,
vs.
C. H. Fargo & Co. et al.

Amended Bill
G. N. 24,238
T. N. 850.

Demurrer Metropolitan National Bank, filed Oct. 6, 1896.

The separate demurrer of Metropoliton National Bank, above named defendants to the amended bill of compla above named plaintiff.

State of Illinois, } ss.
Cook County }

This defendant, by protestation, not confessing or ackn all or any of the matters and things in said plaintiff's bil plaint contained, to be true in such manner and form as are therein set forth and alleged, doth demur to the said for cause of demurrer, showeth that the said complainant in and by its said bill, made or stated such a cause as dot to entitle it to any such discovery or relief as is thereby s prayed for, from or against this defendant.

Whereas, and for divers other good causes of demurrer in the said bill, this defendant doth demand the judgm honorable court, whether he shall be compelled to make a or other answer to the said bill, and prays to be hence with his costs and charges in this behalf, most wrongfully

I hereby certify that in my opinion, the foregoing d the Metropolitan National Bank, defendant to the amen complaint of the American Oak Leather Company, comp well founded in law and proper to be filled in the above c

HOYNE, FOLLANSBEE & O'CON
Solicitors for said

State of Illinois, } ss.
County of Cook. }

E. G. Keith the agent in this behalf of the said defendant, on oath states that he has heard read the foregoing demurrer to the amended bill of complaint of the American Oak Lumber Company in this suit; and that the same is not interposed for the purpose of delaying said suit, or any proceeding therein.

E. G. KEITH.

Demurrer Metropolitan National Bank, filed Oct. 6, 1896.

Subscribed and sworn to before me a Notary Public in and for said Cook County, this sixth day of October, A. D. 1896.

EDWARD DICKINSON,
Notary Public.

(Seal.)

(Endorsed) Filed Oct. 6, 1896.

S. W. BURNHAM,
Clerk.

Afterwards, to-wit, on the seventh day of October, in the July term of said court, 1896, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, District Judge, appears the following entry, to wit:

ENTRY.

American Oak Leather Company, }
vs. } 24238.
H. H. Fargo & Company, et al. }

Now come the parties by their solicitors. Now comes on to be heard the motion for an injunction against John W. Arnold, U. S. Marshal, and the motion for the appointment of a receiver herein. The court, after hearing the arguments of counsel in part, postpones the further hearing of this matter until tomorrow morning.

Hearing on Motions for Injunction and Appointment of Receiver, Oct. 7 & 8, 1896.

Afterwards, to-wit: on the eighth day of October, in the July term of said court, 1896, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, District Judge, appears the following entry, to-wit:

72 ENTRY.

American Oak Leather Company,
vs.
C. H. Fargo & Company. } 24238.

Hearing on Motion for Injunction and Appointment of Receiver, Oct. 7 & 8, 1896.

Now come the parties by their solicitors. Now comes on for further hearing the motion for an injunction and appointment of a receiver herein. The court, after hearing the arguments of counsel in conclusion, takes the matter under advisement.

Afterwards, to-wit, on the nineteenth day of October, in the July term of said court, 1896, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, District Judge, appears the following entry, to-wit:

ENTRY.

American Oak Leather Company,
vs.
C. H. Fargo & Company. } 24,238.

Order of Oct. 19, 1896, Granting leave to U. S. Leather Co., to file Intervening Petition.

On motion, leave is hereby granted to United States Leather Company to file its intervening petition herein.

Afterwards, to-wit, on the twentieth day of October, 1896, came the United States Leather Company and by leave of court first had and obtained, filed in the clerk's office of said court its Bond for Costs and Intervening petition, which said Bond and Petition are respectively in the words and figures following, to-wit:

BOND FOR COSTS.

ed States of America,
rn District of Illinois,
Northern Division.

Circuit Court—Term A. D. 1896.

can Oak Leather Company,
vs.
H. Fargo & Company.
In Chancery.

ter myself security for costs in this cause and promise to pay ts which may accrue to the opposite party in this action, or of the officers of this court, and in default of payment by the States Leather Company of any costs ordered or adjudged aid by United States Leather Co., hereby agree and stipulate xecution may issue against my property for all costs not ex- g two hundred dollars taxed against—

Bond of U. S. Leather Co. for Costs filed Oct. 20, 1896.

ed this 19th day of October, A. D. 1896.
HENRY J. MACFARLAND,
Residence, 1923 Michigan Ave.

nowledged before me, this 19 day of October, 1896.
THOMAS B. ACKERS,
Notary Public, Cook Co., Ills.
al.)

enry J. Macfarland, a surety on the annexed bond, being sworn, depose and say that I am worth in real estate, situate Northern District of Illinois, the sum of four hundred dol- ver and above my just debts and liabilities.
HENRY J. MACFARLAND.

rn to and subscribed before me, this 19 day of October,

THOMAS B. ACKERS,
Notary Public, Cook Co., Illinois.
al.)

dorsed) Filed Oct. 20, 1896.
S. W. BURNHAM,
Clerk.

INTERVENING PETITION OF UNITED STATES LEATHER COMPANY.

United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES.

74 For said District.

To the Honorable Judge of said Circuit Court of the United States in Chancery sitting:

The American Oak and Leather Company,
vs.
C. H. Fargo & Co., et al.

Intervening Petition of U. S. Leather Co. filed Oct. 20, 1896.

Your petitioner, the United States Leather Company, respectfully represents unto your honor that it is a corporation duly organized under and existing by virtue of the law of the State of New Jersey and is a citizen of the State of New Jersey, that on 6th day of June A. D. 1896, C. H. Fargo & Co., of Chicago, Illinois, a corporation, organized and existing under and by virtue of the laws of the State of Illinois, and a citizen of the State of Illinois, and the principal defendant in this case, was justly indebted to your petitioner in the sum of eight thousand two hundred and seventy two dollars and forty-five cents ($8,272.45), for goods, wares, and merchandise before that time sold and delivered by your petitioner to said C. H. Fargo & Co. at its special instance and request, that on said 6th day of June, A. D. 1896, said C. H. Fargo & Co. as evidence of its said indebtedness it then owed your petitioner as aforesaid, executed its three certain promissory notes each dated on the 6th day of June, 1896, payable to the order of "ourselves" and by said C. H. Fargo & Co. endorsed, and then and there on said last mentioned day delivered to your petitioner; one of said promissory notes was for the sum of two thousand two hundred and seventy two dollars and forty-five cents ($2,272.45) due on the 6th day of August, 1896, one of said promissory notes was for the sum of three thousand dollars ($3,000), due on the 6th day of September 1896, and one of said promissory notes was for the sum of three thousand dollars ($3,000) due on the 6th day of October, 1896, all of which will more fully appear by true copies of said promissory notes together with the endorsements thereon hereto attached and

Intervening Petition of U. S. Leather Co. filed Oct. 2d, 1896.

made a part of this petition, the original of which said promissory notes and each of them is now in the possession of your petitioner, and your petitioner is ready and willing and hereby offers to exhibit the originals of said promissory notes and each of them to this court as such time and in such manner as this Honorable Court may direct. That your petitioner is now in the possession and is the legal and equitable owner of said promissory notes and each of them.

Your petitioner further represents that said notes and each of them are past due and that there is now due and unpaid upon said notes the principal sums thereof together with legal interest thereon from the date of their respective maturities. That the above entitled cause was commenced on the 11th day of September, 1896, in favor of said complainant and the creditors of said C. H. Fargo & Co. against the said defendants for the appointment of a receiver, the distribution of the estate of said C. H. Fargo & Co. among its creditors and for other relief. That there is now pending before this honorable court an application on behalf of said complainant for the appointment of a receiver of the property and effects of said defendant C. H. Fargo & Co. for the purpose of marshaling the assets of said C. H. Fargo & Co. and distributing the same among its bona fide creditors under the order and direction of this Honorable Court.

Your petitioner further shows that it is desirous of being made a party complainant to said entitled cause, and to adopt the averments of complainants' bill of complaint as its averments in manner and form as charged in said bill of complaint and to aid in prosecuting the said bill of complaint to its final determination by collecting and distributing the assets of said C. H. Fargo & Co. pro rata among all the creditors of said C. H. Fargo & Co. in such manner as this honorable court may direct, and is willing and hereby offers upon being allowed to come in as such party, to contribute its proportion of the expenses of such proceeding, and to reimburse said complainant its pro rata share of the legal and necessary court costs already paid out and expended by complainant in prosecuting its said bill of complaint herein. Wherefore your petitioner prays that by an order of this court it may be allowed to come in and be made a party complainant in said entitled cause with the said complainant, the American Oak Leather Company, upon payment to it of your petitioner's ratable share of the costs and expenses of said suit in proportion to the amount of its said indebtedness to be determined by the clerk of this court or otherwise ascertained and

Intervening Petition of U. S. Leather Co. filed Oct. 20, 1896.

allowed by the court, and for such other and further relief as to this court shall seem proper.

THE UNITED STATES LEATHER CO.,
Petitioner.
By ASHCRAFT, GORDON & COX,
Its Solicitors.

ASHCRAFT, GORDON & COX,
Solicitors for Petitioner.

76 State of Illinois, } ss.
County of Cook. }

Dennis Dunn being first duly sworn, says that he is the duly authorized agent of the United States Leather Company, the foregoing petitioner, that as such agent he is authorized to make this affidavit on behalf of said petitioner, The United States Leather Company.

Affiant further says that he has read the foregoing petition and knows the contents thereof, and that the same is true in substance and in fact.

DENNIS DUNN.

Subscribed and sworn to before me this eighth day of October A. D. 1896.
(Seal.)

B F. QUIMBY,
Notary Public in and for the County of Cook and State of Illinois.

$2272.45. Chicago, June 6, 1896.

August 6, 1896, after date we promise to pay to the order of ourselves twenty-two hundred seventy-two and 45/100 dollars at our office in Chicago.
Value received.
No.—— Due.

C. H. FARGO & CO.

(Endorsed) C. H. Fargo & Co.

3000. Chicago, June 6, 1896. Intervening Petition of U. S. Leather Co., filed Oct. 20, 1896.

Sept. 6, 1896, after date we promise to pay to the order of ourselves three thousand dollars at our office in Chicago.
Value received.

C. H. FARGO & CO.

0.... Due.
(On the back) C. H. Fargo & Co.

3000. Chicago, June 6, 1896.

October 6, 1896, after date we promise to pay to the order of ourselves three thousand dollars at our office in Chicago.
Value received.

C. H. FARGO & CO.

0.... Due.
(On the back) C. H. Fargo & Co.

(Endorsed) Filed Oct. 20, 1896.

S. W. BURNHAM,
Clerk.

Afterwards, to-wit, on the thirtieth day of November, 1896, there was filed in the clerk's office of said court an Opinion by Judge Grosscup, which said Opinion is in the words and figures following, to wit:

OPINION.

United States of America, } ss.
Northern District of Illinois. }

IN CIRCUIT COURT OF THE UNITED STATES.

In and for said District.

American Oak Leather Company, }
vs. }
C. H. Fargo & Company et al. }

Decision by Grosscup, J.

Monday, November 30th, 1896. Opinion on Motion for Receiver. filed Nov. 30, 1896.

Grosscup, J.

The motion under consideration is for a receiver for the funds now in the hands of the marshal, resulting from a judicial sale of

Opinion on Motion for Receiver, filed Nov. 30, 1896.

the effects of C. H. Fargo & Company, a corporation under the laws of Illinois, and for the book accounts and other assets assigned by the corporation. The funds realized from the sale and assignments are not more than sufficient to meet the judgments obtained by L. Candee & Company, the Metropolitan National Bank, and the United States Rubber Company, judgments obtained upon notes confessedly made in preference to the other creditors of C. H. Fargo & Company, and defended now as a justifiable and lawful preference. If this contention be sustained by the court, the motion for a receiver must fail, for there is nothing for him to take; if the contention, however, be overruled the motion ought to prevail in order to a distribution of the assets equitably among the creditors.

The corporation of C. H. Fargo & Company, organized, in 189[illegible] as successor to the co-partnership of C. H. Fargo, was essentially a family affair. The stock was owned by Charles H. Fargo, his sons, and a brother, or nephew; and of the seven directors, five were Fargos, and the remaining two, employees of the corporation.

78 The corporation got into financial difficulties as early as 189[illegible] but managed to get along without executing any mortgages, judgment notes or other instruments in the way of preference, until about the beginning of the year 1896. Even then the Fargos unquestionably regarded themselves as solvent, and believed that time and the indulgence of their creditors would enable them to survive. But, as it is now apparent, that they were then hopelessly insolvent.

About the first of January, 1896, times growing no better, the Fargos called to their assistance the United States Rubber Company, to whom they satisfactorily showed that, unless helped to the extent of $50,000 was forthcoming, the house must fail. Their indebtedness at this time to the United States Rubber Company was about $180,000; another large amount, but not so large, to L. Candee & Company, and a considerable debt to the Metropolitan National Bank; and debts to creditors generally amounting to a very large sum.

This appeal to the Rubber Company resulted, after considerable negotiation, in the following arrangement: judgment notes were executed to the Rubber Company and Candee & Company for the amount of their claims, including the past, as well as the forthcoming one of $50,000, and subsequently, just before the

ilure, a like note was given to the Metropolitan National Bank for past claim, including some fresh advances of money.

President did not resign but Charles E. Fargo continued in that fice.

The Fargos promised to execute no other judgment notes, nor ve in any form any other preference, and in order to make this fectual the president and secretary of the corporation and a jority of its directors resigned, whose places were filled by the ection of gentlemen from the office of counsel for the Rubber mpanies. Thus denuded of power, the Fargo corporation could ke neither note, mortgage nor assignment without the consent the Rubber Companies, nor could any other creditor obtain ther a preference or an equality with the already preferred cred-rs, without their consent.

During the period intervening, between January 1st and August, hen the judgments were taken and executions sued out, the Fargo mpany pursued its ordinary occupation as a retailer of boots and oes, all the business transactions being carried on by the Fargos emselves; the money received going into the hands of the cor-ration as controlled by the Fargos.

In the meantime the corporation purchased a large quantity of goods upon which there is still unpaid some seventy-five or hty thousand dollars; some of these goods are among the assets d by the marshal, and are the basis of the claims of the interven-g creditors moving for the receiver.

In August an assignment of the corporation's plant at Dixon, id to be worth $25,000, was made to the Metropolitan National nk, and an assignment of its notes and accounts was made to the bber Company, and judgments were obtained upon these judg-ent notes, upon which executions were taken out and levied upon l the remaining property.

I have no reason to believe that either the Fargos or the judg-nt creditors meditated any actual fraud upon the other creditors. he Fargoes, with that hopefulness which actuates men in even ling business enterprises, and leads them to think that the day of barrassment is almost over, doubtless believed that this help from e Rubber Companies would enable them to go on to the advantage all their creditors; and the Rubber Companies doubtless shared

Opinion on Motion for Receiver, filed Nov. 30, 1896.

in that belief. If this were a case where actual fraud or intent to defraud must be proved against the parties concerned it might at this point be dismissed.

But the question recurs, was the arrangement, in itself, a fraud in law? If so, the preference must be set aside, irrespective of the actual intentions of the parties.

A business man's pecuniary circumstances and ability to pay his debts is generally judged by the tangible things he has in sight and the accounts or choses in action he can disclose. Upon these evidences of prosperity credit is usually advanced. This was so true in the earlier days of trading that the common law permitted no lien, either by way of pledge or chattel mortgage upon personal property, unless it was accompanied by the transfer of possession to the lienee. As trade advanced, however, it became necessary that personal property should be susceptible of becoming security for debts or advances, while still remaining in the possession of the owner, the debtor, and hence statutes were passed permitting such liens, where proper registration of the fact was made, so that the world could obtain notice of the exact amount and nature of the burden such property was carrying. Thereafter, persons contemplating credit or advances upon the confidence of the personal property in sight were required, by good business considerations, to inquire what burdens were publicly recorded against it. But these
80 statutes did not repeal the reason upon which the common law prohibition was founded, nor dissolve that prohibition except to the extent plainly intended by the statutes. The personal property in the possession of a merchant still remains the basis of his credit and any device, however rightfuly intended, which might enable a dishonest trader to shield himself against his creditors or to hinder and delay them, is still forbidden by the policy of the law. The doctrine in the Federal courts is based upon Robinson vs. Elliott, 22 Wall., 13, in which the Supreme Court held that a mortgage of a stock of goods permitting the mortgagor to retain possession and sell from the stock without accounting to the mortgagee dollar for dollar for the proceeds of such sale was in law a fraud.

The court, through Justice Davis, speaking of this mortgage said: "Whatever may have been the motive which actuated the parties to this instrument, it is manifest that the necessary result of what they did do was to allow the mortgagors under cover of the mortgage, to sell the goods as their own, and appropriate the pro-

Opinion on Motion for Receiver, filed Nov. 20, 1896.

ds to their own purposes; and this too for an indefinite length time. A mortgage which, in its very terms, contemplates such sults, besides being no security to the mortgagees, operates in e most effectual manner to ward off other creditors: and where instrument on its face shows that the legal effect of it is to de creditors, the law imputes to it a fraudulent purpose." I can no substantial distinction between the reasons which influenced judgment in that case and those that ought to dominate the rul in the case at bar.

The salient features of the arrangement between the Fargo poration and the creditors here claiming preference were as lows:

First. The giving of judgment notes which, in itself was law Second, the transfer of corporate power to representatives of e creditors, thus effectually barring the giving of like judgment es or other instruments or preference to other creditors. Third, ing of actual possession in the Fargos with power to sell and propriate the proceeds, no arrangement having been made that proceeds should be applied to the cancellation of the judgment es. Fourth, the evident and, in fact, confessed motive of all being, not so much to secure the payment of the judgment notes a definite time, as to erect a barrier generally against other cred s during the indefinite period allowed to the Fargos to tide over ir business troubles.

Though different in form, I can see no difference in substance between the arrangement under consideration and that of a se cret mortgage with possession remaining in the mortgagor, un cover of which they sell the goods and appropriate the proceeds their own purposes, and that, too, for an indefinite length of e. The holders of the judgment notes, reinforced with their trol of the corporate power, required no accounting for the s from time to time and no application of their proceeds *pro* to upon the debt, and, evidently, would have indefinitely post ed the collection of the notes if the Fargo's circumstances had ne on prosperously. The arrangement was not intended to pro le means to pay the debt, but solely to provide a legal equipment ereby the entire assets could be quickly seized, in case of dis er, and other creditors be prevented from obtaining a like ad ntage. Had the Fargo's been dishonest they could, under this ar gement, have appropriated to themselves the proceeds of the sales d left to the holders of the judgment notes, when the catastrophe

Opinion on Motion for Receiver, filed Nov 30, 1886.

happened, only the stock unsold, and, during the period of s dishonest appropriation have effectually foreclosed other credit by their arrangement with the Rubber Company. It is not enou to say that such a thing did not, in fact, happen, and that t Fargo's were not, in fact, dishonest. The point is, did the Rub ber Companies make such a dishonest appropriation an easy a natural opportunity to the debtor: if so, the transaction is, in la a fraud. The law looks beyond the specific instance under rev to the example such an instance suggests to the trading wo and to the frauds that might cover themselves under the opp tunities of such an example.

The arrangement under consideration is in its practical aspe an effectual, secret lien upon a stock of goods in trade under c cumstances that justify the trading world into giving security which the trader is not entitled, and is, therefore, a much stron case than even Robinson vs. Elliott. In that case there was not of the lien by registration, but a notice not as broad as the pu poses and opportunities of the lien. In the case at bar, the was no notice whatever. The latter is, at least as much as t former, obnoxious to the reasons which underlie the general co mon law prohibition against liens that give debtors an opp tunity to be dishonest.

While the policy of the law permits preferences and such pref ences as are necessarily unknown to others than those concerned, does not permit any device which prevents the debtor from giv a like advantage to his other creditors, if he so wishes, unless su device is put in the form of a mortgage or other instrum
82 perpetually open to inspection upon the public records. policy of permissable preference thus circumscribed affords equal opportunity to all. A credit advanced, with the sources information always open to access, has no ground of complai But there is ground to complain if the debtor, without any pub notice of that fact, has so situated himself legally that he can give like preferences to any one thereafter whom he may choo Those who deal with him may apprehend his business embarra ment, and be actively conscious of his right to make preferen and still continue to deal prudently, upon the belief that their o claims upon his friendship, or his sense of justice will secure th against advantage. But if the debtor be already securely mor gaged or tied up in an arrangement such as the one under consid ation, there is left no field for the indulgence of such personal co fidence; all reliance upon the personal quantity of the debtor

Opinion on Motion for Receiver, filed 30, 1856.

liminated. The legal permission of such a situation would not ly be a practical fraud upon other creditors, it would effectually rcumscribe the whole field of credit, and thus restrain and hamper le. It would repeal the laws relating to chattel mortgages, for chattel mortgage would be spread upon the records where a se- et lien, or arrangement, might be thus effectively enforced.

It is true the arrangement under consideration was not, in me, a chattel mortgage nor a pledge of property. There is no me in the vocabulary of the law, so far as I know, exactly fitting It is an arrangement possible only to a corporation. An indi idual trader cannot so divide himself that one personality conducts e business and receives the proceeds and another holds exclusively e reins of power. An individual can, by no arrangement except lawfully executed mortgage, debar himself from doing as he eases with that which is his own and acting as he pleases toward ose to whom he is under obligations. With an individual, in con- mplation of law, the right hand always knoweth what the left nd is doing. But here is presented a case where the actual per- nality of the trader is one intellect or set of intellects, and the wer-holding personality another. The Fargos conduct the siness, receive the proceeds and appear to the world as the ninating will of the concern. The young men in the office of e favored creditors' counsel held all the powers of action. The rgos were the corporation of C. A. Fargo & Co., as the world ew and dealt with it, but were as helpless as their neighbor across e street, as the law technically knew and dealt with it. The device under consideration so cleverly dealt with the corpora- tion that while the personality of the Fargos stood out as the controlling power and would, in fact, have obtained the bene- s of success, an invisible barrier in control of the favored cred- rs made them impregnable, not only to attack but helpless against peal to their sense of justice by other creditors. The device ac- mplished for the Fargos and the favored creditors all that a secret attel mortgage with possession and power of sale remaining in e mortgagee, could have accomplished, and must, therefore, be eated, in equity upon all considerations of justice and reason, as uch a mortgage would be treated.

A debtor can prefer one or more of his creditors by the giving f judgment notes without changing his personal aspect toward the ock in trade, or the public at large. But in that event, he must tain the power to do a like act of partiality, or justice to others his mind so inclines; or, still retaining possession of the stock

Opinion on Motion for Receiver, filed Nov. 30, 1896.

of goods he can give a preference that will denude himself of all power to subsequently bring in others for an equal or better chance in the race; but, in that event, the preference must be publicly registered as a chattel mortgage; or, he can give a preference by way of a fair sale, or assignment, but, in that event, his possession of the stock of goods ends, and his attitude toward the trading world is changed. The device under consideration sought, through the peculiar opportunities that corporate adjustments afforded, to obtain all the advantages of these several forms of preference without either a public registration of the fact, or the deprivation of the Fargos, either of their possession of the stock of goods, or the chances of making a profit from the same. The judgment notes themselves, would not have been a fraud in law; the assignment of the accounts, or of the plant at Dixon, would not themselves have been a fraud in law, but, connected, as they were, with the other advantages obtained, namely, deprivation of the Fargos of all further power and permission to retain possession of the goods and reap the profits of their trade, a scheme on the whole under which a dishonest trader could effectually shelter himself, they are, in my judgment, within the plain prohibitions of the law.

The motion will, therefore, be granted, and a receiver may be appointed.

(Endorsed) Filed Nov. 30, 1896.

S. W. BURNHAM,
Clerk.

84 On the same day, to wit, the thirtieth day of November, A. D. the July term of said court, 1896, in the record of proceedings thereof, in said entitled cause, before the Hon. Peter S. Grosscup, District Judge, appears the following entry, to wit:

ENTRY.

merican Oak Leather Company,)
vs. } 24248.
H. Fargo & Company, et al.)

The court having considered and being now fully advised in the premises. It is ordered that the motion of complainant for the appointment of a receiver herein, be, and the same is hereby sustained.

Order of Nov. 30, 1896, sustaining Motion for Receiver.

Afterwards, to wit, on the tenth day of December, in the July m of said court, 1896, in the record of proceedings thereof, in l entitled cause before the Hon. John W. Showalter, Circuit dge, appears the following entry, to wit:

ENTRY.

merican Oak Leather Company,)
vs. } 24238.
H. Fargo & Company, et al.)

Now come the parties by their solicitors, on motion leave is ow granted Estabrook-Anderson Shoe Company, et al, to file tervening petition herein. Leave is also granted to Illinois Cred- to file second intervening petition. Leave is also granted to ooks, Root & Co., et al., foreign creditors, to file second inter- ing petition.

Order of Dec. 10, 1896, granting leave to Estabrook-Anderson Shoe Co. et al. to file intervening petition.

On the same day, to wit, the tenth day of December, 1896, me the Estabrook-Anderson Shoe Company, a corporation, and nbeau Leather Company, a corporation, and by leave of court e had and obtained, filed in the clerk's office of said court their tition, which said Petition is in the words and figures, following, wit:

United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES.

In and for the Northern District of Illinois.

American Oak Leather Company, a corporation, etc.,
vs.
C. H. Fargo & Co., a corporation, etc., United States Rubber Company, a corporation, etc., L. Candee & Co., a corporation, etc., and Metropolitan National Bank of Chicago. } Gen. No. 24,238.

To the Honorable Judge of the Circuit Court of the United States in Chancery Sitting:

Your petitioners, Estabrook-Anderson Shoe Company, a corporation, etc., and Lambeau Leather Company, a corporation, etc., respectfully represent unto your honors as follows:

Intervening petition of Estabrook-Anderson Shoe Co. et al., filed Dec. 10, 1896.

1. That your petitioner, Estabrook-Anderson Shoe Company, is a corporation duly organized and existing under and by virtue of the laws of the State of New Hampshire, and is a citizen and resident of the State of New Hampshire, having its principal office and place of business in the City of Boston, in the State of Massachusetts. That your petitioner, Lambeau Leather Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and is a citizen and resident of the State of Illinois, having its principal office and place of business in the City of Chicago, in the State of Illinois; and that said defendant, C. H. Fargo & Co., now is and always has been a citizen of the State of Illinois; that said defendant, the United States Rubber Company, now is and always has been a citizen of the State of New Jersey; that said defendant, L. Candee & Co., now is and always has been a citizen of the State of Connecticut; that said defendant Metropolitan National Bank, now is and always has been a citizen of the State of Illinois.

2. Your petitioner, Estabrook-Anderson Shoe Company, is now

Intervening petition of Estabrook-Anderson Shoe Co. et al., filed Dec. 10, 1896.

and for many years last past has been engaged in the business of manufacturing and selling shoes; that your petitioner has sold its merchandise from time to time to said C. H. Fargo & for many years past, and that during the spring of 1896, your itioner sold large quantities of such merchandise to said C. H. rgo & Co., amounting in all, prior to the 5th day of August, A. 1896, to the sum of ten thousand dollars ($10,000.00); that said ebtedness of ten thousand dollars ($10,000) was from time to e closed up by said C. H. Fargo & Co., giving its three prom- ory notes to your petitioner, Estabrook-Anderson Shoe Company; t at the time said C. H. Fargo & Co. failed in business and was ed up by the United States Marshal, on or about the 6th day of gust, A. D. 1896, your petitioner, Estabrook-Anderson Shoe mpany, had received from said C. H. Fargo & Co., and ther held d now holds three certain promissory notes all made by said C. H. rgo & Co., payable to the order of your petitioner, Estabrook- derson Shoe Company, at the office of C. H. Fargo & Co., Chi- go, Illinois, as follows:

One note dated April 30th, 1896, due August 18th, 1896, for the incipal sum of three thousand dollars ($3,000.00);

One note dated April 30th, 1896, due August 28th, 1896, for the incipal sum of three thousand dollars ($3,000.00); and

One note dated April 30th, 1896, due September 10th, 1896, r the principal sum of four thousand dollars ($4,000.00).

That said notes maturing as aforesaid, were duly protested and re not paid at maturity, nor at any other time, and that there- er your petitioner, Estabrook-Anderson Shoe Company, began t on said three promissory notes in the Circuit Court of the ited States, in and for the Northern District of Illinois, Northern vision and recovered judgment thereon as hereinafter set th.

3. Your petitioner, Estabrook-Anderson Shoe Company, further resents that on the 20th day of October, A. D. 1896, your itioner recovered a judgment at law against said C. H. Fargo Co., on the indebtedness aforesaid, owing to your petitioner, tabrook-Anderson Shoe Company by said C. H. Fargo & Co. for e sum of ten thousand sixty-seven and 25 100 dollars ($10,067.25) the said Circuit Court of the United States in and for the rthern District of Illinois, Northern Division, in the case known

Intervening petition of Estabrook-Anderson Shoe Co. et al., filed Dec. 10, 1896.

as General Number 24253; that thereafter on the 2nd day of D
cember, 1896, your petitioner, Estabrook-Anderson Shoe Compa
caused to be issued out of the office of the clerk of the said C
87 cuit Court of the United States, in and for the district afo
said, upon said judgment, a writ of fieri facias, directed to t
Marshal of said District, commanding him that out of the lands
tenements, goods and chattels of the said C. H. Fargo he, the s
Marshal, cause to be made the sum of ten thousand sixty-seven a
25 100 dollars ($10,067.25) being the amount of said judgme
together with costs of suit thereon, which said writ of fieri fa
was then and there delivered to said Marshal to execute accord
to law; that on the 8th day of September, 1896, the said Mars
returned the said writ of fieri facias wholly unsatisfied; said M
shal certifying thereon that he had been unable to discover
property of the said defendant in his district out of which by
and sale to collect or make said writ of fieri facias, or any
thereof; that said judgment remains in full force and wholly
satisfied, and the amount aforesaid with interest, is justly, leg
and equitably due your petitioner, Estabrook-Anderson Shoe C
pany, over and above all just credits, deductions and set offs,
that your petitioner, Estabrook-Anderson Shoe Company, has
and is unable to collect the same or in any part thereof by pro
of law.

4. Your petitioner, Lambeau Leather Company, is now,
for many years last past has been engaged in the business of sel
leather; that your petitioner, Lambeau Leather Company, has
its merchandise from time to time, to said C. H. Fargo & Co.
many years last past, and that during the spring of 1896, your
titioner, Lambeau Leather Company, sold large quantities of
merchandise to said C. H. Fargo & Co., amounting in all, prio
the fifth day of August, 1896, to the sum of sixty-nine hundred
fifty and 76 100 dollars ($6,950.76), andthat thereafter your p
tioner, Lambeau Leather Company, began suit on the indebtedn
aforesaid, in the Superior Court of Cook County, Illinois, and
covered judgment therefrom, as hereinafter set forth.

5. Your petitioner, Lambeau Leather Company further re
sented that on the 10th day of September, A. D. 1896, your p
tioner recovered a judgment at law against said C. . Fargo &
on the indebtedness aforesaid owing to your petitioner, Lam
Leather Company, by said C. H. Fargo & Co., in the Super
Court of Cook County, Illinois, in the case known as General N
ber 176,881, for the sum of sixty-nine hundred and fifty

Intervening petition of Estabrook Anderson Shoe Co. et al., filed Dec. 10, 1896.

100 dollars ($6950.76); that thereafter, on the 10th day of September, 1896, your petitioner, Lambeau Leather Company, caused to be issued out of the office of the Clerk of the said Superior Court of Cook County upon said judgment, a writ of fieri facias, directed to the Sheriff of said County, commanding him that out of the lands and tenements, goods and chattels of said C. Fargo & Co., he, the said sheriff, cause to be made the sum of ty-nine hundred and fifty and 76/100 dollars ($6,950.76), being amount of said judgment, together with costs of suit thereon, ich said writ of fieri facias was then and there delivered to said eriff to execute according to law; That on the said 10th day of tember, A. D. 1896, the said Sheriff returned the said writ of i facias wholly unsatisfied, said Sheriff certifying thereon that he been unable to discover any property of the said defendant in County, out of which, by levy and sale, to collect or make said t of fieri facias, or any part thereof; That said judgment remains full force and wholly unsatisfied, and the amount aforesaid with erest, is justly, legally and equitably due your petitioner, Lam- u Leather Company, over and above all just credits, deductions d set-offs, but that your petitioner, Lambeau Leather Company, been and is, unable to collect the same, or any part thereof, by ess at law.

That your petitioners adopt the allegations of the bill filed in above entitled cause, and beg leave to be made parties to said and proceeding, so that your petitioners as such judgment litors of said C. H. Fargo & Co. may participate in the proceeds ing from said litigation, and especially may participate and share h said complainant, American Oak Leather Company, in all eys and property specified in said bill of complaint, or that may realized, and to reach which said bill of complaint was filed as ein set forth.

Your petitioners hereby offer to pay their just proportion of osts and expenses which may be incurred in prosecuting said of complaint under the orders and directions of this Honorable rt, and your petitioners pray for such other and further relief e premises as to your honor shall seem meet and proper.

And your petitioners will ever pray, etc.

ESTABROOK ANDERSON SHOE COMPANY.
LAMBEAU LEATHER COMPANY.
By NEWMAN, NORTHRUP & LEVINSON,
Their Solicitors.

WMAN, NORTHRUP & LEVINSON,
Solrs. for Petitioners.

State of Illinois, }
County of Cook. } ss.

Intervening petition of Estabrook-Anderson Shoe Co. et al., filed Dec. 10, 1896.

Harry Goodman, being first duly sworn, deposes and s
89 that he is the duly authorized agent in this behalf of the pe
tioners named in the foregoing petition, and makes his affid
for and on their behalf, and for and on behalf of each of the
That he has read the foregoing petition, and knows the conte
thereof, and that the same is true.

HARRY GOODMAN.

Subscribed and sworn to before me this 10th day of Decem
A. D. 1896.

(Signed) ARTHUR F APPLETON,
Notary Public in and for Cook County, Illin

(Notarial Seal.)

(Endorsed) Filed Dec. 10, 1896.

S. W. BURNHAM,
Cle

On the same day, to-wit, the tenth day of December, 1896, c
creditors resident in the State of Illinois and by leave of Court f
had and obtained file in the clerk's office, of said court their sec
intervening petition which said Second Intervening Petition is
words and figures following, to-wit:

United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

In and for the Northern District of Illinois.

American Oak Leather Company, a corporation, etc.,
vs.
C. H. Fargo & Co., a corporation, etc., United States Rubber Company, a corporation, etc., L. Candee & Company, a corporation, etc., and Metropolitan National Bank of Chicago.

Gen. No. 24,238

To the Honorable Judge of the Circuit Court of the United States, in Chancery sitting:

Second intervening petition of resident creditors, filed Dec. 10, 1896.

Your petitioners respectfully represent unto your Honor, as follows:

1. That your petitioners are creditors of C. H. Fargo & Co., a corporation, etc., and were such creditors for a long time prior to the 5th day of August, A. D. 1896; that your petitioners became such creditors in the amounts hereinafter named, for goods, wares, and merchandise sold and delivered by your petitioners respectively, to said C. H. Fargo & Co., prior to the said 5th day of August, A. D. 1896; that said C. H. Fargo & Co. became so indebted to your petitioners respectively, while, and during the time said C. H. Fargo & Co. were prosecuting the business in which they were engaged, as set forth in said bill of Complaint.

2. That said C. H. Fargo & Co. are indebted to your petitioners in the amount set opposite their respective names as hereinafter set forth, and that said amounts are due and owing to your petitioners, respectively, over and above all counter-claims and set-offs; and that said C. H. Fargo & Co. have no defense whatever, to said several amounts, or either of them; that the amounts so due your petitioners, respectively, are as follows:

Second intervening petition of resident creditors, filed Dec. 10, 1896.

University of Chicago Weekly	$ 32.17
Dry Goods Reporter Co	100.00
The Singer Manufacturing Company	74.72
Goldsmith, Rosenbush & Levie	43.35

3. That your petitioners were, at the time said bill of complaint was filed in said cause, and ever since have been, and now are, residents and citizens of the State of Illinois.

4. That your petitioners adopt the allegations of the bill filed in the above entitled cause, and beg leave to be made parties to said suit and proceedings thereon, so that your petitioners as such creditors of said C. H. Fargo & Co., may participate in the proceeds arising from said litigation, and especially may participate and share in all moneys and property specified in said bill of complaint and to reach which, said bill of complaint was filed, as therein set forth.

5. Your petitioners hereby pray to pay their just proportion of all costs and expenses which may be incurred in prosecuting said bill of complaint under the orders and directions of this Honorable Court, and your petitioners pray for such other and further relief in the premises as to your Honor shall seem meet and proper.

And your petitioners will ever pray, etc.

UNIVERSITY OF CHICAGO WEEKLY,
DRY GOODS REPORTER CO.
THE SINGER MANUFACTURING COMPANY,
GOLDSMITH, ROSENBUSH & LEVIE,
By NEWMAN, NORTHRUP & LEVINSON.
Their Solicitors.

NEWMAN, NORTHRUP & LEVINSON,
Solrs. for Petitioners.

91 State of Illinois }
County of Cook. } ss.

Harry Goodman, being first duly sworn, deposes and says that he is the duly authorized agent in this behalf of the respective persons, firms and corporations named in the foregoing petition as petitioners therein, and makes this affidavit for and on their behalf and for and on behalf of each of them; that he has read the fore-

ing petition and knows the contents thereof, and that the same is ue.

Second intervening petition of resident creditors, filed Dec. 10, 1896.

HARRY GOODMAN.

Subscribed and sworn to before me this day of December, A. D. 896.

ELMER E. JACKSON,
Notary Public in and for
Cook County, Illinois.

(Notarial Seal.)

(Endorsed) Filed Dec. 10, 1896.

S. W. BURNHAM,
Clerk.

On the same day, to-wit, the tenth day of December, 1896, me creditors residents of States other than the State of Illinois, d by leave of court first had and obtained file in the clerk's fice of said court their second intervening petition, which said cond Intervening Petition is in words and figures following, to-wit:

United States of America,
Northern District of Illinois. } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

Second intervening petition of non-resident creditors, filed Dec. 10, 1896.

In and for the Northern District of Illinois.

merican Oak Leather Company, a Corporation, etc.,
vs.
H. Fargo & Co., a Corporation, etc., United States Rubber Company, a Corporation, etc., L. Candee & Co., a Corporation, etc., and Metropolitan National Bank of Chicago.
} Gen. No. 24238.

o the Honorable Judge of the Circuit Court of the United States in Chancery Sitting:

Second intervening petition of non-resident creditors, filed Dec. 10, 1 96

Your petitioners respectfully represent unto your Honor as follows:

1. That your petitioners are creditors of C. H. Fargo & Co., a corporation, etc., and were such creditors for a long time prior to the 5th day of August, A. D. 1896; that your petitioners became such creditors in the amounts hereinafter named, for goods, wares and merchandise sold and delivered by your petitioners respectively to said C. H. Fargo & Co., prior to the said 5th day of August, A. D. 1896; that said C. H. Fargo & Co. became so indebted to your petitioners respectively while and during the time said C. H. Fargo & Co. were prosecuting the buisiness in which they were engaged as set forth in said bill of complaint.

2. That said C. H. Fargo & Co. are indebted to your petitioners in the amount set opposite their respective names as hereinafter set forth, and that said amounts are due and owing to your petitioners respectively over and above all counter-claims and set-offs; and that said C. H. Fargo & Co. have no defense whatever to said several amounts, or any or either of them; that the amounts so due your petitioners respectively are as follows:

93	Cooks, Root & Co	$ 96
	Wachusetts Mills	173
	Bulletin & Good Roads	462
	Consolidated Hand Method Lasting Machine Co	285
	Tripp Giant Leveller Co	121
	Rouse, Maniere, Williams & Co	184

3. That your petitioners were at the time said bill of complaint was filed in said cause, and ever since have been and still are, citizens and residents of states other than the State of Illinois, the State of Connecticut and the State of New Jersey.

4. That your petitioners adopt the allegations of the bill filed in the above entitled cause, and beg leave to be made parties to said suit and proceeding thereon, so that your petitioners, as such creditors of said C. H. Fargo & Co., may participate in the proceeds arising from said litigation, and especially may participate and share in all moneys and property specified in said bill of complaint, and to reach which said bill of complaint was filed, as therein set forth.

5. Your petitioners hereby offer to pay their just proportion

all costs and expenses which may be incurred in prosecuting Second intervening petition of non-resident creditors, filed Dec 10, 1896
d bill of complaint under the orders and directions of this Hon-
able court, and your petitioners pray for such other and further
lief in the premises as to your Honor shall seem meet and proper.

And your petitioners will ever pray, etc.

CROOKS, ROOT & CO.,
WACHUSETT MILLS,
BULLETIN AND GOOD ROADS,
CONSOLIDATED HAND METHOD LASTING MACHINE CO.,
TRIPP GIANT LEVELLER CO.,
ROUSE, MANIERE, WILLIAMS & CO.,
By NEWMAN, NORTHRUP & LEVISON,
Their Solicitors.

NEWMAN, NORTHRUP & LEVISON,
Solicitors for Petitioners.

te of Illinois, }
nty of Cook. } ss.

Harry Goodman, being first duly sworn, deposes and says that he is the duly authorized agent in this behalf of the respective persons, firms and corporations named in the foregoing petition as petitioners therein, and makes this affidavit for and on their lf, and for and on behalf of each of them; that he has read foregoing petition and knows the contents thereof, and that the e is true.

HARRY GOODMAN.

Subscribed and sworn to before me, this 10th day of December, D. 1896.

Notarial Seal) ELMER E. JACKSON,
Notary Public, in and for Cook County, Illinois.

Endorsed) Filed Dec. 10, 1896.

S. W. BURNHAM,
Clerk.

Afterwards, to wit: On the fourteenth day of December, in the r term of said court, 1896, in the record of proceedings thereof said entitled cause, before the Hon. Peter S. Grosscup, District ge, appears the following entry, to wit:

ENTRY.

American Oak Leather Company,
vs.
C. H. Fargo & Company. } 24,238.

Leave is hereby granted Eagle Tanning Works and Pfister & Vogel Leather Works to file their respective intervening petitions herein.

Order of Dec 10, 1896, granting leave to Eagle Tanning Works et al. to file intervening petition

On the same day, to wit: The fourteenth day of December, 1896, came the Eagle Tanning Works, by its solicitor, and by leave of court first had and obtained filed in the clerk's office of said court its bond for costs and intervening petition which said bond and petition are respectively in the words and figures following, to wit:

95 BOND FOR COSTS.

United States of America,
Northern District of Illinois, } ss.
Northern Division.

CIRCUIT COURT, OCTOBER TERM, A. D. 1896.

Amer. Oak Leather Co. et al.
vs.
C. H. Fargo et al. } In Chancery.

Int. Petn. of Eagle Tanning Works.

Bond for costs, filed Dec. 14, 1896.

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or any of the officers of this court; and in default of payment by int. ptrn of any costs ordered or adjudged to be paid by it, I hereby agree and stipulate that execution may issue against my property for all costs not exceeding two hundred dollars taxed against it.

Dated this 14th day of December, A. D. 1896.

WM. J MANNING.
Residence 3242 Calumet Ave

Acknowledged before me, this 14th day of December, 1896.

S. W. BURNHAM,
Clerk U. S. Circuit Court, Nor. Dist.

. W. J. Manning. a surety on the annexed bond, being duly orn, depose and say that I am worth in real estate, situate in the rthern District of Illinois, the sum of four hundred dollars over d above my just debts and liabilities. Bond for costs, filed Dec. 14, 1896.

WM. J. MANNING.

worn to and subscribed before me, this 14th day of December, 6.

S. W. BURNHAM,
Clerk.

Endorsed) Filed Dec. 14, 1896.

S. W. BURNHAM,
Clerk.

INTERVENING PETITION OF EAGLE TANNING WORKS.

N THE CIRCUIT COURT OF THE UNITED STATES.

For the Northern District of Illinois,

Northern Division.

erican Oak Leather Company et al.
vs.
C. H. Fargo & Co. et al. } In Chancery.

The Intervening Petition of Eagle Tanning Works.

Your petitioner, Eagle Tanning Works, of Chicago, Illinois, a poration duly organized and doing business under the statutes of nois, respectfully show to the Honorable Judges of said court, t during the months of April, May, June and July, 1896, your titioners, being tanners and manufacturers of leather, sold and livered to the defendant, C. H. Fargo & Company, goods and rchandise amounting to the sum of twenty-five hundred and 100 ($2,500.24) dollars, as is shown by a statement of account reto attached and made a part hereof, and that no part of said in- btedness has ever been paid, but that the same remains wholly paid in open account, upon the books of your petitioner. Intervening Petition of Eagle Tanning Works, filed Dec. 14, 1896.

Your petitioners, as creditors of said C. H. Fargo & Co., under e provisions of the complainant's bill filed herein, claim all the hts, benefits and advantages of the original bill filed by the

Intervening Petition of Eagle Tanning Works, filed Dec. 14. 1896.

complainant herein, and the subsequent proceedings thereunder, a to the same extent as if the petitioner had been originally a pa complainant therein, but subject to such rights and priority on t part of the original complainants as the court shall hereafter de mine they are entitled to on account of moneys expended by th and for the solicitor's fees incurred by them, and for their diligen in the prosecution of this suit.

And your petitioners pray that after the payment as aforesai may, under the orders and decrees of this court, receive such p rata share of the proceeds realized from the sale of the asset said C. H. Fargo & Co. as may be just and equitable.

EAGLE TANNING WORKS,
By S. M. McCONNELL,
Presid

WM. J. MANNING,
Solr. for Petitioner.

97 United States of America, } ss.
Northern District of Illinois. }

State of Illinois, } ss.
Cook County. }

S. M. McConnell, being first duly sworn, on oath states that is the president of the Eagle Tanning Works, which is a corpo tion duly organized under the laws of the State of Illinois; that has read the foregoing petition, and knows the contents there and that the same is true in substance and in fact.

SAMUEL M. McCONNELL.

Subscribed and sworn to before me this 7th day of Decem A. D. 1896.

GEORGE S. COLE.
Notary Pub

[Seal]

Chicago, Dec. 1, 1896.

Intervening petition of Eagle Tanning Works, filed Dec. 14, 1896.

C. H. Fargo & Co.

In Acct with Eagle Tanning Works,

No. 212 and 214 Lake Street.

Apr.	1	172.64	
	6	178.22	
	15	162.17	
	25	360.03	
May	5	182.02	
	11	103.67	
	15	103.05	
	27	52.51	
	28	112.35	
	29	108.90	
June	2	175.11	
	8	68.59	
	9	61.68	
	15	165.18	
	19	168.39	
	23	179.20	
July	1	57.83	
	15	88.70	
			2500.24

(Endorsed) Filed Dec. 14, 1896.

S. W. BURNHAM,
Clerk.

On the same day, to wit, the fourteenth day of December, 1896, came Pfister and Vogel Leather Company by its solicitors and by leave of court first had and obtained filed in the clerk's office of said court its Bond for Costs and Intervening Petition, which said Bond and Petition are respectively in the words and figures following, to wit :

BOND FOR COSTS.

United States of America,
Northern District of Illinois. } ss.
Northern Division.

CIRCUIT COURT, DECEMBER TERM, A. D. 1896.

American Oak Leather Company,
vs. } In Chancery.
C. H. Fargo & Co. et al

Bond for costs of Pfister & Vogel Leather Co., filed Dec. 14, 1896.

We enter ourselves security for costs in this cause on the intervening petition of Pfister & Vogel Leather Co. and promise to pay all costs which may accrue to the opposite party in this action on account of such intervening petition or to any one of the officers of this court; and in default of payment by the petitioner of any cost ordered or adjudged to be paid by said intervening petitioner hereby agree and stipulate that execution may issue against our property for all costs not exceeding two hundred dollars taxed against said Pfister & Vogel Leather Co.

Dated this 14th day of December, A. D. 1896.

TENNEY, McCONNELL & COFFEEN,
M. L. COFFEEN,
Residence 205 LaSalle St., Chicago

Acknowledged before me this 14th day of Dec. 1896.
S. W. BURNHAM,
Clerk U. S. Circuit Court Nor. Dist. Ill.

I, M. Lester Coffeen a surety on the annexed bond, being duly sworn, depose and say that I am worth in real estate situate in the Northern District of Illinois, the sum of four hundred dollars, over and above my just debts and liabilities.

M. LESTER COFFEEN.

99 Sworn to and subscribed before me this 14th day of December, 1896.

S. W. BURNHAM,
Clerk.

(Endorsed) Filed Dec. 14, 1896.

S. W. BURNHAM,
Clerk.

INTERVENING PETITION OF PFISTER & VOGEL LEATHER CO.

State of Illinois. }

IN THE UNITED STATES CIRCUIT COURT,

For the Northern District of Illinois.

American Oak Leather Company, a Corporation,
vs.
C. H. Fargo and Company, a Corporation, United States Rubber Company, a Corporation, L. Candee and Company, a Corporation, John W. Arnold, United States Marshal, and The Metropolitan National Bank. } No. 24238.

Intervening petition of Pfister & Vogel Leather Co., filed Dec. 14, 1896.

The petition of Pfister and Vogel Leather Company, which is a corporation, organized and doing business under the laws of the State of Wisconsin, and is a citizen of said state, respectfully shows to the court that the complainant above named, heretofore, to-wit, on the 11th day of September, 1896, filed its bill of complaint herein, against said defendants, seeking relief therein as a creditor of the defendant, C. H. Fargo & Company, and on behalf of itself and all other creditors of said corporation; which bill is still pending herein, as by reference thereto and to the record of this cause will more fully appear.

Petitioner further shows that between January 7th and June 26, 1896, it sold and delivered to the defendant, C. H. Fargo and Company, goods and merchandise at the price and of the value of twenty thousand five hundred four dollars and thirty-two cents ($20,504.32), upon which said defendant has made payments amounting to two thousand nine hundred forty-six dollars and forty-two cents ($2,946.42) and no more, leaving a balance due your petitioner from said C. H. Fargo and Company, after allowing all just credits, deductions and set-offs, of seventeen thousand five hundred and fifty-seven dollars and ninety cents ($17,557.90). That on July 23, 1896, said defendant, C. H. Fargo and Company, executed and delivered to petitioner its note for a portion of said indebtedness, which note is dated July 23, 1896,

Intervening petition of Pfister & Vogel Leather Co., filed Dec. 14, 1896.

and is for the sum of fifteen thousand dollars ($15,000.00), payab on demand, at the office of said defendant, to its order, and by endorsed and delivered to your petitioner, who still holds the sam that the balance of said indebtedness, to-wit, the sum of two tho sand five hundred fifty-seven dollars and ninety cents ($2,557.9 is due to your petitioner upon open account.

Petitioner adopts as its own the allegations of the original bi herein, and makes the same a part of its petition, the same though set forth at length herein, and offers to contribute its fa proportion to the costs and expenses of said suit, and prays to admitted as party complainant and to have the same relief as pany, and the other defendants herein, and to have such other a further relief as may be just.

said bill prayed, both against the defendant, C. H. Fargo and Co

TENNEY, McCONNELL & COFFEEN,
Petitioner's Solicitors

State of Illinois, } ss.
Cook Connty }

M. Lester Coffeen, of said County, being first duly sworn, sa that he is one of the solicitors for the petitioner named in the fo going petition; that he has read said petition, and the same is tr as he verily believes.

M. LESTER COFFEEN.

Subscribed and sworn to before me, this 10th day of Decembe 1896.

LOUIS C. YOST,
(Seal) Notary Public Cook County, Illinois

(Endorsed) Filed Dec. 14, 1896.

S. W. BURNHAM,
Clerk

Afterwards, to-wit, on the fifteenth day of December, in th July term of said court, 1896, in the record of proceedings there in said entitled cause before the Hon. Peter S. Grosscup, Distric Judge appears the following entry, to-wit:

ENTRY.

American Oak Leather Company,
vs.
C. H. Fargo & Company. } 24,238.

It is ordered by the court that the motion of certain creditors to intervene be continued for hearing until to-morrow morning.

Order of Dec. 16, 1896, postponing hearing on motion to intervene.

Afterwards, to wit, on the twenty-eighth day of December, 1896, there was filed in the clerk's office of said court a certain motion, which said motion is in the words and figures following, to wit:

MOTION.

IN THE CIRCUIT COURT OF THE UNITED STATES.

Northern District of Illinois.

Northern Division.

American Oak Leather Co.
vs.
C. H. Fargo Company et al. } In Chancery.

Now comes Thomas E. Wilder and John E. Wilder by Chas. S. Williston, their solicitor and present their intervening petition in the above entitled cause and pray leave to file the same instanter.

Motion of Thomas E. Wilder et al. to file intervening petition.

CHAS. S. WILLISTON.
Solicitor for Thomas E. Wilder and John E. Wilder.

(Endorsed) Filed Dec. 28, 1896.

S. W. BURNHAM,
Clerk.

Afterwards, to wit: On the fourth day of January, 1897, there was filed in the clerk's office of said court, an opinion by Judge Jessup, which said opinion is in words and figures following, to wit:

102 OPINION.

CIRCUIT COURT OF THE UNITED STATES.

Northern District of Illinois.

American Oak Leather Company,
vs.
C. H. Fargo & Company.
} Peter S. Grosscup, J.

Opinion by Grosscup, J., filed Jan. 4. 1897.

Let an order be entered finding that the preferences obtain the Rubber Companies and the Metropolitan Bank, are, in l fraud upon all creditors whose debts have been made since the t action in January, 1896, and are, therefore, as against such c ors void; and that the court finds, however, that there was n tention upon the part of such preferred creditors to commit fraud, and they will not be denied, on that account, their rig share pro rata in the assets of C. H. Fargo & Company; that cause be referred to Master Bishop to ascertain the rightful an of all claims for debts contracted since said transaction in Jan 1896, before whom all such claims can, without any interv petition, but upon notice to solicitors of record for the other pa be filed; that the master ascertain the rightful amount of the including reasonable attorney's fees incident to the procureme this interlocutory order, and that claims only be allowed upon dition of their payment of the pro rata share of such costs and ney's fees and that the master report his findings in this respec cluding the amount of each claim, both of the so-called pref creditors and of other creditors, to this court for further order.

That, in the meantime, the said master is appointed a receiv this court, under bond in the amount of $—— to take posse of the moneys and other assets affected by this order with pow loan money upon good security, at reasonable rates of inte pending the litigation, and to collect the other assets preparato their distribution among the creditors; that the said Bishop, as ter, make his report herein of the amount of the claims due for decree as speedily as possible.

(Endorsed) Filed Jany. 4, 1897.

S. W. BURNHAM,
C

Afterwards, to-wit: On the eighteenth day of January, 1897, in the December term of said court, 1896, in the record proceedings thereof in said entitled cause, before the Hon. Peter Grosscup, District Judge, appears the following entry, to-wit:

ENTRY.

erican Oak Leather Company,
vs.
H. Fargo & Company, et al. } 24,238.

On motion, leave is hereby granted the Metropolitan National nk to withdraw demurrer heretofore filed herein and file its an- r instanter.

Order of Jan. 18, 1896, granting leave to Metropolitan National Bank to file answer.

On the same day, to-wit: The eighteenth day of January, 1897, ne the Metropolitan National Bank of Chicago, by its solicitors, by leave of court first had and obtained file in the clerk's office said court its answer to the bill of complaint in said entitled se, which said answer is in words and figures following, to-wit:

SWER METROPOLITAN NATIONAL BANK OF CHICAGO.

nited States of America,
rthern District of Illinois,
Northern Division. } ss.

N THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Northern Division.

American Oak Leather Company,
vs.
H. Fargo & Company, a corporation, etc. et al. } In Chancery. G. N. 24,238. T. N. 850.

The several answer of the Metropolitan National Bank of Chi- o, a corporation, etc., to the bill of complaint of the American Leather Company, a corporation, etc., complainant.

Answer of Metropolitan National Bank, filed Jan. 18, 1897.

Answer of Metropolitan National Bank, filed Jan 18, 1897

This defendant, saving and reserving to itself all benefit of ex-
ception to the many errors, uncertainties and imperfections in
bill contained, for answer thereto, or unto so much thereof as it
advised it is material or necessary for it to make answer unto,
swering says:

104 1. This defendant has no knowledge, nor has it any in-
mation sufficient to enable it to form a belief, respecting
truth of the allegations in the first paragraph of said bill of co
plaint contained and it therefore neither admits nor denies the sa
but leaves the complainant to make such proof thereof as it
be advised.

2. This defendant is informed and believes that the allegat
in the second paragraph of said bill of complaint contained,
specting the organization of the defendant corporation, C. H. Fa
& Company, are substantially true, except the allegation that
certificate of incorporation was not filed according to law in
Recorder's Office of Cook County, Illinois, and was not filed u
on or about the sixth day of October, 1891, concerning which p
ticular allegation it has no knowledge, nor has it sufficient infor
tion to enable it to form a belief. This defendant, therefo
neither admits nor denies the allegation respecting the filing of s
certificate of incorporation in the recorder's office, but leaves
complainant to make such proof thereof, if material, as it shall
advised. And this defendant admits the truth of the other alle
tions in said paragraph of said bill of complaint contained.

3. This defendant is informed and believes that the allegati
in the third paragraph of said bill of complaint contained is s
stantially true, and it therefore admits the substantial tr
thereof.

4. This defendant is informed and believes that the alle
tions in the fourth paragraph of said bill of complaint contain
are substantially true, and it therefore admits the substantial tr
thereof.

5. This defendant is informed and believes that the alle
tions in the fifth paragraph of said bill of complaint contained
substantially true, and it therefore admits the substantial tr
thereof.

6. This defendant is informed and believes that the alle
tions in the sixth paragraph of said bill of complaint contained

Answer of Metropolitan National Bank, filed Jan. 18, 1897.

bstantially true, and it therefore admits the substantial truth ereof.

7. This defendant denies the truth of the allegations, and each d every of them, in the seventh paragraph of said bill of com- int contained.

8. This defendant had no knowledge of the allegations in the eighth paragraph of said bill of complaint contained, nor has it fficient information to enable it to form a belief. It therefore ither admits nor denies the allegations therein, but leaves the mplainant to make such proof thereof, if material, as it shall be rised.

8a. This defendant denies the truth of the allegations, and each d every of them, in the paragraph numbered 8a in said bill of mplaint contained.

9. As to the allegations contained in the ninth paragraph of id bill of complaint, this defendant has no knowledge, nor has it fficient information to enable it to form a belief It therefore ither admits nor denies the allegations therein, but leaves the mplainant to make such proof thereof, if material, as it shall be rised.

10. As to the allegations contained in the tenth paragraph of id bill of complaint, this defendant has no knowledge, nor has it fficient information to enable it to form a belief. It therefore ither admits nor denies the allegations therein, but leaves the mplainant to make such proof thereof, if material, as it shall be rised.

11. As to the allegations contained in the eleventh paragraph said bill of complaint, this defendant has no knowledge, nor has sufficient information to enable it to form a belief. It therefore ither admits nor denies the allegations therein, but leaves the mplainant to make such proof thereof, if material, as it shall be rised.

12. As to the allegations contained in the twelfth paragraph said bill of complaint, this defendant has no knowledge, nor has sufficient information to enable it to form a belief. It therefore ither admits nor denies the allegations therein, but leaves the mplainant to make such proof thereof, if material, as it shall be rised.

Answer of Metropolitan National Bank, filed Jan. 18, 1897.

13. As to the allegations contained in the thirteenth paragraph of said bill of complaint, this defendant has no knowledge, nor has it sufficient information to enable it to form a belief. It therefore neither admits nor denies the allegations therein, but leaves the complainant to make such proof thereof, if material, as it shall be advised.

14. As to the allegations contained in the fourteenth paragraph of said bill of complaint, this defendant has no knowledge, nor has it sufficient information to enable it to form a belief. It therefore neither admits nor denies the allegations therein, but leaves the complainant to make such proof thereof, if material, as it shall be advised.

106

15. As to the allegations contained in the fifteenth paragraph of said bill of complaint, this defendant has no knowledge, nor has it sufficient information to enable it to form a belief. It therefore neither admits nor denies the allegations therein, but leaves the complainant to make such proof thereof, if material, as it shall be advised.

16. As to the allegations contained in the sixteenth paragraph of said bill of complaint, this defendant has no knowledge, nor has it sufficient information to enable it to form a belief. It therefore neither admits nor denies the allegations therein, but leaves the complainant to make such proof thereof, if material, as it shall be advised.

17. As the allegations contained in the seventeenth paragraph of said bill of complaint, this defendant has no knowledge, nor has it sufficient information to enable it to form a belief. It therefore neither admits nor denies the allegations therein, but leaves the complainant to make such proof thereof, if material, as it shall be advised.

18. As to the allegations contained in the eighteenth paragraph of said bill of complaint, this defendant has no knowledge, nor has it sufficient information to enable it to form a belief. It therefore neither admits nor denies the allegations therein, but leaves the complainant to make such proof thereof, if material, as it shall be advised.

19. As to the allegations contained in the nineteenth paragraph of said bill of complaint, this defendant has no knowledge, nor has it sufficient information to enable it to form a belief.

Answer of Metropolitan National Bank, filed Jan. 18, 1897.

herefore neither admits nor denies the allegations therein, but aves the complainant to make such proof thereof, if material, as shall be advised.

20. As to the allegations contained in the twentieth paragraph of said bill of complaint, this defendant has no knowledge, or has it sufficient information to enable it to form a belief. It herefore neither admits nor denies the allegations therein, but aves the complainant to make such proof thereof, if material, as it hall be advised.

21. As to the allegations contained in the twenty-first paragraph of said bill of complaint, this defendant has no knowlge, nor has it sufficient information to enable it to form a belief. herefore neither admits nor denies the allegations therein, but aves the complainant to make such proof thereof, if material, as shall be advised.

22. This defendant denies the truth of the allegations in the enty-second paragraph of said bill of complaint contained, as said egations are therein named and stated. Respecting the subject atter thereof, this defendant says that the defendant corporation own as C. H. Fargo & Company, wholesale dealers in boots and oes had for several years last past been doing business with this fendant, had kept a deposit account with it, and had from time time borrowed money therefrom to use in carrying on its business oresaid; that for the purpose of establishing its credit with this fendant, the said defendant, C. H. Fargo & Company, had from me to time furnished to this defendant statements of its assets and bilities, which showed it to have had assets largely in excess of liabilities, and by reason of, and on account of, the manner in hich it had transacted its business with this defendant, it had tablished a large line of credit therewith; that the line of credit extended to said defendant, C. H. Fargo & Company, was the m of $50,000, and at times this defendant had loaned the said corration for the temporary use even more than that sum, which nts had, for the most part, been promptly met or renewed at the turity thereof.

That relying upon said representations, this defendant had loaned said defendant, C. H. Fargo & Company, moneys from time to me, so that on or about the first day of August, 1896, it had tstanding notes representing an indebtedness of said company to e amount of $40,000 and that in view of the stringency of the oney market at or about that time, this defendant gave notice to

Answer of Metropolitan National Bank, filed Jan. 18, 1897.

said defendant, C. H. Fargo & Company, that it desired to call i
said money as loaned, to the amount aforesaid, from the said d
fendant C H. Fargo & Company, not later than the first day o
November, 1896.

That in response to said notice, Charles E. Fargo, the presiden
of said defendant company, shortly thereafter called at the ban
of this defendant, and stated to one of its officers that owing to th
light sales that said company was making, the difficulty of makin
collections, and the general disturbance of business that existed o
account of the then pending presidential election, not only woul
said company not be able to pay this defendant said moneys
108 demanded as soon as named, but that it would be obliged t
borrow from it up to the full line of its credit of $50,0
aforesaid, being the sum of $10,000 in addition to the amount whi
this defendant then held against the said defendant C. H. Fargo
Company; that the president of said defendant C. H. Fargo
Company then and there represented to said officer of this defendan
that his said company was amply solvent, and that its assets ver
largely exceeded its liabilities, and that there was no question b
what the former would, in any event be sufficent to pay off all
its outstanding indebtedness, that the said defendant, C. H. Farg
& Company had theretofore given this defendant its judgme
promissory notes for the indebtedness from time to time owing b
it to this defendant, and, after due consideration, this defendan
finally proposed and agreed with the president of said defendan
corporation that in case the said defendant C. H. Fargo & Compan
would give its judgment notes, not only for the $10,000 so request
to be loaned, but for the entire indebtedness that would then b
owing by said defendant C. H. Fargo & Company to this defendan
that this defendant would loan said company said additional sum o
$10,000.

This defendant avers that the said president of said defendan
company then and there expressed his willingness so to do and th
and there informed this defendant that his said company had heret
fore given its judgment notes to the defendants, United States Ru
ber Company and L. Candee & Company, for the amounts it w
indebted to them, respectively, and that he would get the necessar
authority from his company, authorizing him to make judgme
notes to this defendant for the amount of its indebtedness to th
defendant, as aforesaid.

That thereafter the said C. E. Fargo, president as aforesaid, r
ported that he had got the authority from his company, authorizi

Answer of Metropolitan National Bank, filed Jan. 18, 189

him to execute said judgment notes aforesaid, whereupon this defendant loaned the said defendant C. H. Fargo & Company said additional sum of $10,000 and received its two judgment promissory notes therefor, for the sum of $25,000 each, and upon receipt of the same, it paid over to said C. E. Fargo, as president of the said defendant C. H. Fargo & Company, said sum of $10,000 and surrendered to him said plain notes evidencing said indebtedness of $40,000 aforesaid.

That, in the meantime, this defendant having learned the extent of the indebtedness of the said defendant, C. H. Fargo & Company to the said defendants, United States Rubber Company and L. Candee & Company, and also learned that they had some kind of an agreement with the said defendant C. H. Fargo & Company by which they were authorized to secure their indebtedness in advance of that of any of the other creditors of said company, thereupon this defendant caused steps to be taken to ascertain what advantage said defendant C. H. Fargo & Company had given to said two companies aforesaid, and having learned that they were entitled under their agreement with said Company to enter up their judgments in advance of any one else, as aforesaid, and having learned also, the extent of the indebtedness of the said defendant, C. H. Fargo & Company to them, this defendant caused further steps to be taken looking towards the payment or security of the said two judgment notes aforesaid and that upon receiving a proposition from the said defendant, C. H. Fargo & Company to purchase from it its manufacturing plant at Dixion, Illinois, for the sum of $25,000 took said suggestion under consideration with a view of determining the desirability thereof.

That during the entire negotiations between this defendant and the said defendant, C. H. Fargo & Company, this defendant, and those acting for it, were repeatedly assured by the officers of and those acting on behalf of, said defendant, C. H. Fargo & Company, that its assets were very largely in excess of its liabilities, and that the assets were not less than $550,000 while its liabilities did not exceed the sum of $400,000 and this defendant, and those acting for it, were also assured that there was no question whatever as to the ability of said company to pay its debts in full, in any event whatever.

That this defendant caused interviews to be held by persons representing it with parties representing the said two Rubber Companies aforesaid, and that at such interviews it was learned that said

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Answer of Metropolitan National Bank, filed Jan. 18, 1897.

companies were contemplating the taking of active measures to s the collection of the indebtedness due to them from the said defe ant, C. H. Fargo & Company, and that thereupon this defend deemed that it would be for the best interest of both parties c cerned not to act at cross purposes with each other, but to unite t efforts to collect their respective claims against said compa that it is not true that this defendant and said Rubber Compa consolidated their claims, but what they did do was to agree to u their efforts to collect their respective claims and in order to c about such an agreement, it was stipulated between themselves t the results of their efforts should be distributed in the proportio their respective claims, and that if either party received 110 larger percentage of its claim than the other party did as result of their efforts, it would account to such other party a sum sufficient to make the percentage payments of their respec claims equal.

And this defendant further avers, that in view of what it lear as to the determination of said defendants, United States Rub Company and L. Candee & Company, as aforesaid, it determine endeavor to secure the payment of its said two notes as afore and to that end it accepted the proposition of the said defendant H. Fargo & Company for the transfer of its plant at Dixon in p ment of one of its said notes of $25,000, as aforesaid, and it acc ingly received deeds of said property, which it at once recorded cancelled and surrendered one of said notes, and thereupon ca a judgment to be entered upon the other of said notes in the Cir Court of Cook County, Illinois, and levies to be made upon tangible property of said defendant, C. H. Fargo & Company, Chicago and at Dixon. It avers, however, upon information belief that such levies were made subsequent in point of time levies made upon the same property under executions issued ou the Circuit Court of the United States for the northern distric Illinois, in favor of the said defendants, United States Rubber C psny and L. Candee & Company.

23. As to the allegations contained in the twenty-third paragr of said bill of complaint, this defendant admits that the resoluti therein set forth, authorizing the officers of the said defendant, H. Fargo & Co., to execute promissory notes to this defendant the aggregate sum of $50,000 in place of the plain notes then h by it and also authorizing the president and vice-president of s company to negotiate with this defendant for a sale and transfer it of said company's real estate and buildings in Dixon, Illinois, $25,000, were duly passed as in said paragraph set forth, but it

Answer of Metropolitan National Bank, filed Jan. 18, 1897.

s that said resolutions were passed to carry out and consummate plan and design, as set forth in said bill of complaint, but, on contrary, it avers that said resolutions were passed in pursuance h the plan and arrangement entered into between this defendant the said defendant, C. H. Fargo & Company, as hereinbefore forth.

24. As to the allegations contained in the twenty-fourth paraph of said bill of complaint, touching the transfer of the book ounts and choses in action belonging to said defendant, C. H. rgo & Company, to the defendant, United States Rubber Comy, it admits, upon information and belief, the passage of the resion therein set forth.

25. As to the allegations contained in the twenty-fifth paragraph of said bill of complaint, this defendant denies that in all proceedings, meetings and resolutions therein referred to, the offi- of said defendant, C. H. Fargo & Company, the said defend- United States Rubber Company and L. Candee & Company, this defendant, acted by mutual agreement or in collusion, or erwise than as hereinbefore set forth.

As to the allegation therein contained, averring that said Rubber panies, this defendant and the officers of the said defendant, H. Fargo & Company, acting in conjunction and collusion, on gust 6, 1896, caused said defendant, C. H. Fargo & Company, execute a certain instrument in writing, purporting to assign, nsfer and deliver unto said defendant, United States Rubber pany, all outstanding book accounts and bills receivable, and ms and demands payable to said defendant, C. H. Fargo & Comy, it denies any collusion on its part in reference thereto, but its, upon information and belief, that an assignment thereof s so made, but it denies that the same was of the value therein ged.

As to the allegation therein contained, that the said defendant, C. Fargo & Company, then and there delivered all of its books, rds and papers, evidencing said accounts receivable and bills ivable, unto the said defendant, United States Rubber Company, trust for itself, this defendant and said L. Candee & Company for their sole use and benefit, it denies the same and says that had no interest therein, except as hereinbefore stated in its answer er the twenty-second paragraph hereof.

And as to the allegation therein contained, that said United States

Answer of Metropolitan National Bank, filed Jan 18, 1897.

Rubber Company then obtained, and ever since has retained possession of said books and papers, this defendant has no knowledge except upon information and belief, but it admits that it has been informed that said Rubber Company now has possession of said books and papers aforesaid.

26. As to the allegations contained in the twenty-sixth paragraph of said bill of complaint, this defendant denies that, acting in conjunction and collusion with the said officers of said defendant C. H. Fargo & Company, and said Rubber Companies, judgments were caused to be entered as therein alleged, except as herein before stated in the twenty-second paragraph of this answer.

27. As to the allegations contained in the twenty-seventh paragraph of said bill of complaint, this defendant denies that on the sixth day of August, 1896, said defendant C. H. Fargo & Com-
112 pany was possessed of tangible property and assets, consisting of a stock of manufactured boots and shoes and business fixtures located in a brick building at the south-west corner of Market and Quincy streets in the City of Chicago, of the fair market value of about $100,000, but admits that it was so possessed of such tangible property and assets thereat, of the fair market value of $65,000.

It denies it was possessed of a manufacturing plant in the city of Dixon, of the fair market value of $50,000, and avers that the same was worth, in the condition in which it was conveyed to this defendant, less than the sum of $25,000.

It admits that it caused executions to be issued upon the judgments entered by it as aforesaid, and to be levied upon the property and assets located in the City of Chicago and the City of Dixon, and admits upon information and belief, that the judgments therein alleged were entered in favor of the two Rubber companies, as therein set forth, and that executions and levies were issued thereon as therein alleged, and also that an execution was issued in favor of this defendant on the judgment so entered as aforesaid, and that its execution was levied subsequent to the levy of said Marshal thereinnamed, but denies that the same was done for the purpose of deceiving said complainant or the other creditors of said defendant C. H. Fargo & Company, or giving said levies the appearance of being a race between diligent creditors, and it denies the allegation therein contained, that it and said two rubber companies had consolidated their claims, or done anything other in reference thereto than as hereinbefore set forth in the answer set forth in the answer to paragraph twenty-two aforesaid.

Answer of Metropolitan National Bank, filed Jan. 18, 1897.

28. As to the allegations contained in the twenty-eighth paragraph said bill of complaint, this defendant admits that the property so ied on at Chicago, Illinois, was advertised for sale by the United tes Marshal, and sold by him under said two executions in favor said two defendants, United States Rubber Company, and L. nlee & Company, on the twenty second day of August, 1896, the sum of $65,000, and it is informed and believes, and so ad- the fact to be, that said factory personal property located at xon, Illinois, exclusive of the real estate, levied on by said United tes Marshal was advertised for sale by him and sold on the enty-fourth day of August, 1896, for the sum of $15,500; that factory building and the ground upon which it stands at Dixon, inois, was not sold by said Marshal, but is claimed by this defend- under the conveyance set forth in said bill of complaint.

This defendant denies that said property at Chicago and Dixon, Illinois, was sold at a great sacrifice, or that this defendant is properly chargeable with any loss on account thereof; and ad- upon information and belief, that the moneys for which the e were sold were paid to, and received by, the United States rshal, as in said bill alleged.

29. As to the allegations contained in the twenty-ninth para- ph of said bill of complaint, this defendant admits that said de- dant, C. H. Fargo & Company, conveyed the property described said bill of complaint to this defendant, on the sixth day of gust, 1896, but it denies that it was done pursuant to any fictitious olutions, or in consummation of any alleged agreement between nd said Rubber Companies, as in said bill alleged.

30. As to the allegations contained in the thirtieth paragraph the said bill of complaint, this defendant denies that its claim inst the said defendant corporation of C. H. Fargo & Company 0,000 or any sum less than said sum of $50,000 which it now s against said defendant, C. H. Fargo & Company, and that by on of any matters in said bill of complaint set forth, its judg- t against said company is now null or vaid, or of no effect. l as to the allegations therein contained with reference to the ms of said Rubber Companies against the said defendant cor- ation of C. H. Fargo & Company, it has no knowledge, nor has fficient information to enable it to form a belief, and it there- neither admits nor denies the allegations in reference thereto, leaves the complainant to make such proof thereof, if material, shall be advised.

Answer of Metropolitan National Bank, filed Jan. 18, 1897.

31. As to the allegations contained in the thirty-first paragra of said bill of complaint, this defendant says that it has no kno edge, nor has it sufficient information to enable it to form a bel and it therefore neither admits nor denies such allegations, but lea the complainant to make such proof thereof, if material, as it sh be advised.

32. As to the allegations contained in the thirty-second pa graph of said bill of complaint, this defendant denies that said fendant corporation of C. H. Fargo & Company had no lawful ri to cause said judgment to be entered in favor of this defendant, to cause said real estate to be conveyed to it as aforesaid, for purpose of paying the claim due to it, or that said action on its p was in fraud of the rights of said complainant.

33. As to the allegations contained in the thirty-third paragra of said bill of complaint, that said defendant corporation of C. Fargo & Company has ceased doing business and does not
114 tend to resume, it has no knowledge, nor has it sufficient formation to enable it to form a belief, it therefore neither mits nor denies the allegations therein, in that respect, but lea the complainant to make such proof thereof, if material, as it sh be advised.

34. As to the allegations contained in the thirty-fourth pa graph of said bill of complaint, this defendant has no definite kno edge, but it believes, upon information, that the allegations ther contained are substantially true.

35. As to the allegations contained in the thirty-fifth paragra of said bill of complaint, this defendant says it has no knowled nor has it sufficient information to enable it to form a belief, and therefore neither admits nor denies the allegations in referenc the repayment of moneys loaned or advanced by said Rubber Co panies, but leaves the complainant to make such proof thereof, material, as it shall be advised.

36. As to the allegations contained in the thirty-sixth paragra of said bill of complaint, this defendant admits, upon informati and belief, that said outstanding book accounts, so alleged to h been assigned by said defendant, C. H. Fargo & Company to s United States Rubber Company, were at the time of the filing said bill being collected and converted into money, but it denies t the same are held in trust for this defendant in any way other th as stated in its answer under paragraph twenty-two, as hereinbef set forth.

Answer of Metropolitan National Bank, filed Jan. 18, 1897.

37. As to the allegations contained in the thirty-seventh paragraph of said bill of complaint, this defendant has no knowledge or has it sufficient information to enable it to form a belief, and it therefore neither admits nor denies the allegations therein but leaves the complainant to make such proof, if material, as it shall be advised.

38. As to the allegations contained in the thirty-eighth paragraph of said bill of complaint, touching the appointment of Frank Makeel as receiver, and his inability to obtain possession of the property so conveyed to this defendant, this defendant admits the same to be substantially true.

39. As to the allegations contained in the thirty-ninth paragraph of said bill of complaint, this defendant denies that the property held by it, or any part of it, ought to be applied to the satisfaction of complainant's judgment.

And now, having fully answered said bill of complaint, this defendant prays to be hence dismissed, with its costs and charges in this behalf most wrongfully sustained.

METROPOLITAN NATIONAL BANK OF CHICAGO,
By HOYNE, FOLLANSBEE & O'CONNOR,
Its Solicitors.

HOYNE, FOLLANSBEE & O'CONNOR,
Solicitors for said Defendant.

(Endorsed) Filed Jan. 18, 1897.

S. W. BURNHAM,
Clerk.

On the same day, to-wit: The eighteenth day of January, 1897, the December term of said court, 1896, in the record of proceedings thereof in said entitled cause, before the Hon. Peter S. Grosscup, District Judge, appears the following entry, to-wit:

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The American Oak Leather Company, a corporation, &c.,
vs.
C. H. Fargo & Co., a corporation, United States Rubber Company, a corporation, L. Candee & Co., a corporation, Metropolitan National Bank of Chicago, a corporation, and John W. Arnold, United States Marshal.

Order of Jan. 18, 1897.

This cause coming on to be heard on motion of the complainant herein for the appointment of a receiver, pursuant to the prayer of the bill of complaint, the answers and affidavits thereto filed herein, the answer of the United States Rubber Company, and L. Candee & Company being by consent of complainant made in open court treated as properly and fully verified for the purpose of being used as an affidavit on this hearing, and the statement of William H. Beale made in open court being by agreement of all parties to be treated as an affidavit to be used on said hearing; the complainant being represented by Messrs. Newman, Northrup and Levinson, and Messrs. Smith, Helmer, Moulton and Price, their solicitors, the said United States Rubber Company and L. Candee & Company by Messrs. Isham, Lincoln and Beale, their solicitors, the Metropolitan National Bank of Chicago, by Messrs. Hoyne, Lansbee and O'Connor, its solicitors, the said C. H. Fargo & Co. by Thomas Cratty, its solicitor, and the said John W. Arnold, United States Marshal, being present in court in person as well as by his solicitors, and the proofs hereinbefore mentioned and the arguments of counsel for the respective parties having been heard, the court for the purposes of this motion for the appointment of a receiver only, finds that the arrangement between the said C. H. Fargo & Company upon the one hand, and the United States Rubber Company and L. Candee & Company and the Metropolitan National Bank of Chicago upon the other hand, about January, 1896, and all the subsequent proceedings and conditions in pursuance of said arrangement, including the taking of judgments and the assignment of personal assets, choses in action and real estate therein described were, in law, a fraud upon all the other creditors of C. H. Fargo & Company whose claims arose subsequent to that date.

Order appointing Henry W. Bishop receiver.

It is, therefore, ordered, first, that Henry W. Bishop, be and he hereby appointed receiver of the said defendants, C. H. Fargo

mpany, a corporation organized and existing under and by virtue the laws of the State of Illinois as receiver, of all the property assets legal and equitable except the real estate and factory ilding at Dixon, for which provision is hereinafter made, includ- all moneys and choses in action of the said C. H. Fargo & Com- ny, and vested with all the powers of a receiver in chancery in e cases, upon his filing in the clerk's office his bond as such re- iver in the penal sum of one hundred and fifty thousand dollars th good and sufficient sureties to be approved by the clerk of this rt conditioned for the faithful performance of his duties as such eiver. Order appointing Henry W Bishop receiver.

It is further ordered that said John W. Arnold, United States rshal, immediately upon the approval of said bond, pay and de- er over to said receiver all the moneys that have come into his nds as proceeds of the levies and sales made by him as such Mar- al under executions heretofore issued from this court on the two rtain judgments in this court and executions issued thereon, ainst C. H. Fargo & Company, one in favor of said United States bber Company, and one in favor of said L. Candee & Company, er deducting from said moneys the lawful fees of said Marshal the matter of said levies and sales. And the said Marshal is erely restrained from paying over said moneys to the said judg- ent creditors. Order for delivery of money to receiver.

It is further ordered that said defendant, United States Rub- ber Company and L. Candee & Company and their solicitors, ssrs. Isham, Lincoln and Beale, upon the approval of said bond liver to said receiver forthwith, all the books and papers of said . H. Fargo & Company that on or about the 5th day of August, 96, came into their hands, possession or control, including the dgers, journals, day books, cash books, bank books, record books, inute books, stock books, check books, correspondence, bills re- ivable, deeds, abstracts, leases, and all other evidences of title d indebtedness and all papers and vouchers showing or evidenc- g in any way moneys or other property belonging to, or due said C. H. Fargo & Company, from any person, firm or cor- oration. Order for delivery of books and papers to receiver.

It is further ordered that upon the filing of said bond said United ates Rubber Company, L. Candee & Company, and Messrs. Isham, incoln and Beale, deliver to said receiver, a full itemized state- ent showing in detail all their acts and doings on and since the th day of August, 1896, in the matter of the collection or enforce- ent of any claims or indebtedness now or heretofore due or owing Order for delivery of statement.

Order for delivery of statement.

to said C. H. Fargo & Company, and also pay and deliver over said receiver all proceeds of all said accounts receivable, bills rec abie or other choses in action of said C. H. Fargo & Company a of any other property or assets of said C. H. Fargo & Compa which have come into their hands, possession or control, or to t hands, possession or control of any or either of them, on and sin the 5th day of August, 1896.

Order for delivery of chattel property

It is further ordered that said United States Rubber Compa and L. Candee & Company, upon the approval of said bond, forth with deliver to said receiver all the chattel property contained the factory at Dixon, Illinois, including stock on hand, goo manufactured and in process of manufacture. goods, wares a merchandise, and all other chattels, purchased by them, either of them or by any person for them, from said United Stat Marshal.

Restraining order on Metropolitan National Bank.

It is further ordered and decreed that the said Metropolit National Bank shall be enjoined and restrained and is hereby e joined and restrained from executing or delivering any deed of co veyance lease or otherwise of the said real estate known and describ as follows:

A part of the southwest quarter (South of Rock River) of secti thirty-three (33), township twenty-two (22), north range nine (9 Lee County, Illinois, bounded as follows: Commencing at the nort west corner of the east half of the northwest quarter of secti 118 four (4) in township twenty one north in range nine (9) aforesaid, and running thence west two (2) chains and twenty nine (29) links, thence north (12 degrees west) six chains and se enty (70) links to Rock River, thence northeasterly along Ro River to a post and stone due north of the place of beginning, then south seven (7) chains and thirty-five (35) links to the place of b ginning, containing 2 10/100 acres more or less (subject to exis ing highways thereon and subject to the right of the Chicago a Northwestern Railway to occupy said highway and railroad tracks also part of subdivision lot number five (5) of the southwest fra tional quarter (South of Rock River) of section thirty-three (33 township twenty-two (22), north of range number nine (9), east the Fourth P. M. bounded and described as follows, to-wit: begi ning at a stone at the southwest corner of said lot number five (and running thence north along the west line of said lot 426 fee Thence southeasterly 434 feet to the south line of said lot, then west along said south line of said lot 102 feet and 4 inches to t place of beginning, said lot number five being the same designate

tted and described on the Assessors plat of the said subdivision orded in the Recorder's office of Lee County, Illinois, in book A" of Miscellaneous records on page 166, or from incumbering same, or from in any way, parting with any interest in the e, until the further order of this court, the object of this injunc- being to preserve a complete statu quo until the further order this court. Restraining order on Metropolitan National Bank.

It is further ordered that said C. H. Fargo & Company by its ly authorized officers, upon the approval of said bond forthwith ke, execute and deliver unto said receiver an assignment and con- yance of all the property and assets, real, personal, and mixed, al and equitable, and choses in action belonging to said defend- C. H. Fargo & Company, or in which it is or can in any way interested to Henry W. Bishop, said receiver. Order for delivery of property to receiver.

It is further ordered that said receiver be and is hereby author- and empowered to take immediate possession of all moneys, ts and property affected by and included in this order, with er to loan money upon first class securities, at reasonable rates interest, pending this litigation, and to collect all the assets which may receive and to which he may be entitled under this order as edily as may be. Order authorizing receiver to take possession

It is further ordered that in turning over property to the receiver der this order said United States Rubber Company, said L. Can- & Company, said Metropolitan National Bank, and said Isham, Lincoln and Beale, and any of them, shall be entitled to credit themselves for the time being with such reasonable expenditures as they may respectively have made or incurred or about the collection or care of any such property including any counts or allowances upon accounts and bills payable to said ivent corporation and that report of the same be made by the eiver to this court as well as of such compensation as they may ntitled to for said accounts and the care of said property. Order allowing credit of expenditures.

This order to take effect from January 19th, and is entered sub- ent to and to be regarded as the action of the court subsequent to the order immediately preceding.

And, to wit, on the 4th day of March, 1897, in the March Adjourned Term of said Court, in the record of proceedings reof in said entitled cause before Hon. Peter S. Grosscup, Dis- trict Judge, appears the following entry, to wit :—

121 United States of America, Northern District of Illinois. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois.

Thursday, March 4, 1897.

Present, Hon. Peter S. Grosscup, District Judge.

The American Oak Leather Company
vs.
C. H. Fargo & Co., United States Rubber Company, L. Candee and Company, the Metropolitan National Bank of Chicago and John W. Arnold, United States Marshal.

Orders of March 4, 1897.

This cause coming on this day to be heard upon the application of Henry W. Bishop, Receiver herein, for authority to employ legal counsel and for instructions and directions of the Court with respect to the assets which may come to his hands as such Receiver; and counsel for the parties respectively having been duly notified of such application or being present in open Court, and the Court being fully advised in the premises, it is hereby ordered, adjudged and decreed,

Order as to depository for money.

First: That said Henry W. Bishop, Receiver herein, is hereby authorized and directed to deposit any and all moneys which may come to his hands as such Receiver with the Equitable Trust Company of Chicago, Illinois, upon the best terms that he can secure from said Company.

Order as to incurring of expense by receiver.

122 Second: That in connection with the care and custody of the chattel property which may come to his hands as receiver, and in connection with the collection of accounts receivable of C. H. Fargo & Co., the said Henry W. Bishop as such Receiver is hereby authorized to incur and pay such expenses as in his judgment shall be necessary or advisable.

Order as to legal counsel of receiver.

Third: That said Receiver is hereby authorized and directed to employ Messrs. Isham, Lincoln & Beale as his legal counsel in connection with his receivership, and to turn over to said counsel

lection all the accounts receivable of C. H. Fargo & Co., to- Order as to legal counsel of receiver.
her with all the books and papers of said C. H. Fargo & Co. ating to said accounts. The said Receiver is, and his said legal unsel are, hereby authorized to settle or compromise said ac- nts or any of them and make allowances thereon at their discre- n whenever in their judgment such settlement, compromise or wance shall be advisable.

Judge.

And on the ninth day of March, 1897, came American Oak Leather Company and Lambeau Leather Company by their itors, and filed in the Clerk's office of said Court a certain peti- which said petition is in the words and figures following to-

TITION OF AMERICAN OAK LEATHER COMPANY AND LAMBEAU LEATHER COMPANY.

nited States of America,
rthern District of Illinois. } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

In and for the Northern District of Illinois.

American Oak Leather Company, a corporation of Illinois,
vs.
H. Fargo & Co., a corporation of Illinois, United States Rubber Co., L. Landee & Co. and John W. Arnold, United States Marshal.

The Honorable Judge of the Circuit Court of the United States, in Chancery Sitting: Petition of American Oak Leather Co. et al., filed Mch. 9, 1897.

Your petitioners, American Oak Leather Company and Lambeau ather Company, respectfully represent unto your Honor, as fol- ws:

Petition of American Oak Leather Co. et al., filed Mch. 9, 1897.

1. That, heretofore, on the 18th day of January, A.
124 1897, an order was entered in said cause appointing the H
Henry W. Bishop, Receiver of all the property and assets
said principal defendant, C. H. Fargo & Co., and directing cert
other defendants to turn over the property in their possession
said receiver, That said receiver accepted such appointment,
duly qualified, and is now acting as such Receiver.

2. That a large number of the creditors of said C. H. Fargo
Co. have filed intervening petitions in the above entitled cause
are seeking to avail themselves of the labor of your petitioners
their counsel without paying their just proportion of costs, expe
and solicitors' fees.

3. That your petitioners deem it only just and equitable t
the creditors of said C. H. Fargo & Co. (other than your petiti
ers) if they wish to share in the fund brought into this Court
placed in the hands of said Receiver through the efforts of y
petitioners and the labors of their counsel, that such credit
should be required to pay their just share and proportion of
costs, expenses and solicitors' fees heretofore incurred and wh
may hereafter be incurred in bringing said fund into Court
prosecuting this cause.

4. And your petitioners pray that a proper order in the pre
ises be entered by this Court with respect to said creditors, t
rights, duties and obligations.

And your petitioners will ever pray, etc.

AMERICAN OAK LEATHER COMPANY, and
LAMBEAU LEATHER COMPANY,
By NEWMAN, NORTHRUP & LEVINSON, and
SMITH, HELMER, MOULTON & PRICE,
Their Solicito

NEWMAN, NORTHRUP & LEVINSON and
SMITH, HELMER, MOULTON & PRICE,
Solicitors for said Petitioner.

125 State of Illinois, } ss.
County of Cook. }

Harry Goodman, being first duly sworn, deposes and says th
he is the duly authorized agent of said petitioners in this beha

that the foregoing petition and the matters and things therein forth are true.

HARRY GOODMAN.

Subscribed and sworn to before me this 9th day of March, A. D. 97.

ELMER E. JACKSON,
Notary Public in and for Cook County, Illinois.

(Seal)

(Endorsed) Filed Mar. 9th, 1897.

S. W. BURNHAM,
Clerk.

Orders of March 11, 1897.

Afterwards, to wit, on the 11th day of March, A. D. 1897, in the March Adjourned Term of said court, in the record of proceedings thereof in said entitled cause before the Hon. William H. Seaman, District Judge, appears the following entry, to wit:

CIRCUIT COURT OF THE UNITED STATES.

Northern District of Illinois.

Northern Division.

Thursday, March 11, 1897.

Present, Hon. William H. Seaman, District Judge.

Order referring petition of American Oak Leather Co. to Master.

On reading and filing the petition of the American Oak Leather Company and Lambeau Leather Company, two of the creditors of C. H. Fargo & Co., it is

Ordered by the court that said petition be, and the same is hereby referred to Henry W. Bishop, Esq., one of the masters in chancery of this court, to take evidence thereon, and determine what are the reasonable costs and expenses, including counsel and solicitors' fees, incurred by said petitioners, The American Oak Leather Company and Lambeau Leather Company, and any other creditors of C. H. Fargo & Co., in securing the appointment of the receiver herein, and bringing the funds and property into this court, and placing the same in the hands of the receiver herein; and said master in chancery shall also determine and report to this court what solicitors and counsel were instrumental in bringing said fund into

court and what amount should be paid to each counsel for s
services.

Order as to fees and expenses.

128 And it is further ordered, that when the time for filing cl
with the receiver herein has expired, as hereinafter provided
creditors who have filed their claims as hereinafter provided,
and excepting the defendants, United States Rubber Company,
Candee & Co., and the Metropolitan National Bank of Chi
shall contribute pro rata to the fees and expenses as the same
have been determined by the master and approved by this co
and for that purpose, the master shall determine the just pro
tion which each creditor who shall so have filed his claim with
receiver herein, shall contribute toward such fees and expenses,
upon the failure, refusal or neglect of such creditor to pay over
said master in chancery the amount which he is ordered to pay
said master in his said report to this court, and if such failure,
fusal or neglect shall continue ten (10) days after said master's
port is confirmed by the court, then, on and after the expiration
said ten days, the claims so filed with said receiver by the credi
failing, refusing or neglecting to so pay the amount ordered t
paid by said master, shall stand disallowed, and such claims s
be for ever barred from sharing in said estate, and from par
pating in the distribution of the property in the hands of
receiver herein, or which may at any time hereafter come
his hands, possession and control.

Order as to filing of claims.

129 And it is further ordered by the court that all creditors o
H. Fargo & Co. who may wish to share in the property
assets now in the hands of the receiver herein, or hereafter co
into his hands, shall file their claims duly verified with said
ceiver, within thirty-five (35) days from the entry of this or
and all claims so filed shall state specifically and in detail the
ture, character and amount of such claim, when contracted,
due, whether any written evidence or security is held, or ever
held therefor, and if so, the nature, character and extent of
written evidence and security.

And it is further ordered that all creditors who have heretof
intervened in this cause and filed their intervening petitions her
shall, notwithstanding said intervening petitions, file their veri
claims with said receiver, in the manner and upon the terms her
before provided, as fully and to the same extent as if they
never filed such intervening petitions.

And it is further ordered that each and every creditor of sai

Fargo & Co. shall file his verified claim with said receiver, in manner and upon the terms hereinbefore provided, within rty-five (35) days from the entry of this order, and every such editor, excepting the three creditor defendants above mentioned, failing so to do, shall be forever barred from sharing in said es-, and that said receiver shall within ten (10) days from the entry reof, mail a copy of this order to each creditor of said C. H. rgo & Co. whose name appears upon the books of said C. H. rgo & Co., and that such copy may be mailed to the solicitor of r creditor of C. H. Fargo & Co. who appears of record in this se for such creditor, in lieu of mailing the same to such creditor creditors. Order as to filing of claims.

Nothing in this order contained shall be construed as affecting the United States Rubber Company, L. Candee & Co. and the tropolitan National Bank of hicago, or any or either of them.

And on the first day of April, 1897, came the American Oak Leather Company, by its solicitor, and filed in the clerk's e of said court, its replication to the answer of The Metropoli- National Bank of Chicago, which said replication is in the rds and figures following, to wit:

REPLICATION TO ANSWER OF METROPOLITAN NATIONAL BANK OF CHICAGO.

Replication to answer of Metropolitan National Bank, filed Apr 1, 1897.

United States of America,
Northern District of Illinois,
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES.

For the Northern District of Illinois.

e American Oak Leather Company,
Complainant,
vs.
H. Fargo & Co., a corporation,
etc., et al.
Gen. No. 24,238.

The replication of The American Oak Leather Company, com- inant, to the answer of the Metropolitan National Bank of Chi- , a corporation, etc., defendant.

Replication to answer of Metropolitan National Bank, filed Apr. 1, 1897.

This repliant saving and reserving to himself now, and at
times hereafter, all and all manner of benefit and advantage of e
ception which may be had or taken to the manifold insuffici
132 cies of the said answer of the above named defendant, for re
lication thereunto says that it will aver, maintain and prove
bill of complaint to be true, certain and sufficient in the law to
answered unto, and that the said answer of the above named
fendant is uncertain, untrue and insufficient to be replied unto
this repliant without this; that any other matter or thing what
ever in the said answer contained, material or effectual in the l
to be replied unto, and not herein and hereby well and sufficien
replied unto, confessed and avoided, traversed or denied, is tr
All which matters and things this repliant is ready to aver, ma
tain and prove as this Honorable court shall direct, and humb
prays as in and by its said bill of complaint it has already pray

SMITH, HELMER & MOULTON,
NEWMAN, NORTHRUP & LEVINSON,
Solicitors for said Complainan

(Endorsed) Filed Apr. 1, 1897.

S. W. BURNHAM,
Cler

133 And on towit: the 10th day of May 1897 there was filed
office of the Clerk of said Court in said cause the Master's r
port in words and figures following to wit:

United States of America.
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES

Northern District of Illinois,

Northern Division.

The American Oak Leather Company, A Corporation etc. Complainant,
vs.
C. H. Fargo & Co., A corporation, et al., Defendants.

Gen. No. 24,238.
Term No. 850.

MASTER'S REPORT.

To the Honorable P. S. Grosscup, Judge of said Court:

A reference having been made in this cause to the undersigned, as Master in Chancery, on the eleventh day of March, A. D. 1897, to take evidence thereon and determine what are the reasonable costs and expenses, including counsel and solicitors' fees, incurred by said petitioners, The American Oak Leather Company and Lambeau Leather Company, and any other creditors of C. H. Fargo & Company, in securing the appointment of the Receiver herein and in bringing the funds and property into this court and placing the same in the hands of the Receiver and determining what solicitors and counsel were instrumental in bringing said fund into Court, and what amount should be paid to said counsel for such services and to determine the just proportion which each creditor who shall have filed his claims with the Receiver herein within thirty-five days from the entry of said order, should contribute towards such fees and expenses, and in the manner provided for in said order, I hereby report

Master's report, filed May 10, 1897.

That a copy of said order so entered on March 11, 1897, together with a notice of the entry thereof, was sent by mail within ten days from the entry of said order to each creditor of said C. H. Fargo & Co., whose name appears on the books of C. H. Fargo &

Master's report, filed May 1.

Co., and to the solicitors of any creditor of C. H. Fargo & Co. who appear of record in this cause for such creditor, as provided in said order, except to the defendants, the United States Rubber Company, L. Candee & Company and the Metropolitan National Bank of Chicago, as provided by the terms of said order. A copy of said notice and of said order so mailed, as aforesaid, is attached hereto and marked "Exhibit A."

I was on the twenty-second day of April, A. D. 1897, at my office in the Monadnock Building, in Chicago, at eleven o'clock in the forenoon, and on Friday, the twenty third day of April, at half after two o'clock in the afternoon, being the times and place fixed for a hearing and the taking of testimony pursuant to said order entered in said cause on March eleventh, A. D. 1897, attended by Messrs. Jacob Newman and Frederick A. Smith, representing the complainant and certain creditors, and also by William J. Manning, Esq., on behalf of the Eagle Tanning Works, C. King, Esq., 136 on behalf of the Acme Sign Printing Company, M. D. Follansbee, on behalf of the Metropolitan National Bank, H. K. Tenney, Esq., on behalf of the Pfister & Vogel Leather Company, Mr. Chancellor, of Thornton & Chancellor, on behalf of Albert S. Hottle, and Gilbert E. Porter, Esq., on behalf of the solicitors for the United States Rubber Company and L. Candee & Company, Isham, Lincoln & Beale, C. S. Williston, Esq., on behalf of Wilder & Company, Frederic F. Norcross, Esq., on behalf of the Grand View Hotel Company, E. M. Ashcraft, Esq., on behalf of the United States Leather Company, and by M. W. Whittemore, Esq., representing the Chicago Directory Company, when the testimony of Jacob Newman, Frederick A. Smith, and Horace Kent Tenney was taken and is herewith reported. Notice in writing of the time and place of said hearing was given to the attorneys and solicitors of all creditors who appeared in said cause by attorneys or solicitors (as complainants, intervening creditors, or creditors filing claims or otherwise), and where any creditors filed claims with said Receiver without an attorney or solicitor, like notice was given to such creditors by mail. A copy of said notice last mentioned, together with the proof of service thereof, is hereto attached and made a part hereof and marked "Exhibit B."

From an examination of this testimony, and statements made by counsel, I find and report that the reasonable costs and expenses including counsel and solicitors' fees incurred by said petitioners, The American Oak Leather Company and the Lambeau Leather Company, and any other creditors of C. H. Fargo & Co., in securing the appointment of the Receiver herein and bringing the fund

d property into this Court, and placing the same in the hands of Master's report, filed May 10, 1897.
e Receiver, amount to the sum of Five Thousand Dollars, ($5,000) counsel and solicitors' fees, and Four Hundred and Ten Dollars and seventy-seven cents ($410.77) expenses and disbursements incurred by them as such, making the total Five Thousand Four Hundred and Ten Dollars and seventy-seven cents, ($5,410.77), which I find and report should be paid to Newman, Northrup & Levinson for their reasonable services, with the understanding, however, that any claims made in connection with such services by Smith, Helmer, Moulton & Price is included in said sum and to be paid from it by said Newman, Northrup & Levinson, and I also find

That the creditors who have filed their claims, as in said order provided, save and excepting the said defendants, the United States Rubber Company, L. Candee & Company and the Metropolitan National Bank of Chicago, appear in the list which is hereto attached and marked "Exhibit A," which list shows the amounts claimed to be due by each, and also the just proportion which each of said creditors shall contribute toward such fees and expenses, which proportion is at the rate of three and twelve thousand eight hundred and sixty-five-hundred-thousandths per cent (3.12865%).

The claim of Graton & Knight Manufacturing Company, amounting to the sum of Thirteen Hundred and Thirty-five Dollars and sixty cents ($1,335 60) is not included in the above enumeration, having been received by me on the 26th day of April, instant, and the claim of Specialty Shoe Company, amounting to the sum of Fifty-six Dollars and ninety-five cents ($56.95) is not included in the above enumeration, having been received by me on the 20th day of April, instant, and are not within the time fixed by the order referred to.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States, Northern District of Illinois.

Dated Chicago, April 28, A. D. 1897.

(By direction all exhibits are omitted.)

134 Afterwards, to-wit, on the 17th day of May, 1897, in t
May Adjourned Term of said Court, in the record of proce
ings thereof in said entitled cause before the Hon. Peter S. Gro
cup, District Judge, appears the following entry, to wit:—

139 ORDER OF MAY 17, 1897.

UNITED STATES CIRCUIT COURT,

Northern District of Illinois.

Northern Division.

Monday, May 17, 1897

Present Hon. Peter S. Grosscup, District Judge.

The American Oak Leather Company, a corporation of Illinois, vs. C. H. Fargo & Co., a corporation of Illinois, United States Rubber Co., L. Candee & Co., Metropolitan National Bank of Chicago and John W Arnold, United States Marshal	In Chancery. 24238

Order of May 17, 1897, approving Master's report.

This cause coming on to be further heard upon the report
Henry W. Bishop, Esq., Master in Chancery, filed herein on t
eighth day of May, A. D. 1897, which report finds that the cred
ors of C. H. Fargo & Co. who have filed their claims with the R
ceiver of C. H. Fargo & Co. should pay the sum of Five Thous
Four Hundred and Ten and 77/100 Dollars ($5410.77) in propo
tion to their respective claims against said C. H. Fargo & Co.,
set out in said report, and the Court having duly consider
140 said report, and having heard the arguments of counsel w
respect to the matters therein set forth, and being now fu
advised in the premises, doth order, That said report of Henry W
Bishop, Esq., one of the Masters in Chancery of this Court, be a
the same is hereby in all things ratified, confirmed and approve
That each creditor of said C. H. Fargo & Co. who has filed h
claim with said Receiver, pursuant to the order heretofore e
tered in this cause, shall pay to said Henry W. Bisho
Master in Chancery, within ten (10) days from t
entry of this order, the amount assessed against each credi

Order of May 17, 1897, approving Master's report.

said Master in and by said report. That in case any such cred- r shall fail, refuse or neglect to pay over to said Henry W bop the amount which he is assessed to pay in said report, hin ten (10) days from the entry hereof, then the claim so filed h said Receiver by such creditor so failing, refusing or neglect- to pay, shall stand disallowed, and such claim shall be forever red from sharing in said estate and from participating in the tribution of the property in the hands of the Receiver herein, or ch may at any time hereafter come into his hands, possession control. And that said Master shall send a notice of the entry his order, together with a printed copy of the same, to all cred- s named in his said report within five (5) days from the entry of s order. Nothing contained in this order shall affect the rights claims of the defendants, United States Rubber Company, L. blee and Company and the Metropolitan National Bank of icago as creditors of C. H. Fargo & Co., and no part of the pay- t provided for herein shall be chargeable in any way against distributive shares of the funds or assets now or hereafter in the ds of the Receiver to which they respectively may be mately entitled unless hereafter otherwise ordered by this rt.

This order shall not have the effect of finally allowing the said claims or either of them filed with the Master, as shown by his ort, as against the funds or assets now or hereafter in the hands the Receiver, nor shall it have the effect of depriving any or all ons interested in said assets from hereafter contesting and hav- a hearing upon said claims or either of them.

And on, to wit, on the 29th day of May, 1897, there was filed in the office of the Clerk of said Court Report of ter, in the following words and figures, to wit:

MASTER'S REPORT.

United States of America,
Northern District of Illinois. } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

Northern District of Illinois,

Northern Division.

The American Oak Leather Company, a corporation, &c., Complainant,
vs.
C. H. Fargo & Co., a corporation, et al, Defendants,
} In Chancery. Gen. No. 24,238.

MASTER'S REPORT.

To the Honorable P. S. Grosscup, Judge of said court:

Master's report of May 29, 1897.

I, Henry W. Bishop, Master in Chancery, to whom by an or of the court entered in the above entitled cause on the seventee day of May, A. D. 1897, the execution of said order was comm ted hereby report that in pursuance of said order I did, within time directed in said order, send a notice of the entry of said or together with a printed copy of the same to each and all of creditors named in the report of said Master, dated the eighth of May, A. D. 1897, within five days of the date of the entry said order of the seventeenth day of May, A. D. 1897, by 143 positing the same in the United States mail on the ninetee day of May A. D. 1897, showing the list of creditors and amount of each claim, under said order of March eleventh, A. 1897, and the amount which each of said creditors should contri pro rota to the fees and expenses referred to in said order, a c of which said notice and entry of order is hereto attached and m a part hereof.

And I herewith return a list, marked "Exhibit A" of creditors of C. H. Fargo & Co. who have complied with the ter of said order of May seventeenth, 1897, together with the amou paid by each.

I also return a list marked "Exhibit B" of those creditors who are not complied with the terms of said order. Master's report of May 29, 1897.

The total amount paid in to me by said creditors under said order of May seventeenth, A. D. 1897, is five thousand one hundred and thirteen dollars and eighty five cents ($5,113.85).

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States, Northern District of Illinois.

Dated, Chicago, May 29th, 1897.

EXHIBIT A.

Showing Amount of each Claim under said Order of May 17, A. D. 1897, and the Amount which each has contributed, *pro rata*, to the Fees and Expenses referred to in said Order: Exhibit A—List of creditors who have complied with order of May 17.

No.	Claimant.	Amount of Claim.	Pro rata Assessment paid on each Claim.
1	The Boot & Shoe Recorder,	$231 88	$ 7 25
2	Bour & Co.	75 00	2 34
3	Senneff, Oddy & Company,	17 06	53
4	B. G. Robinson,	17 80	55
5	Dixon Power & Lighting Co.	33 30	1 05
6	Dixon Ice Company,	23 35	74
7	Cordia M. Malone,	12 00	37
7½	Lida R. Malone,	8 08	25
8	Wyckoff, Seamans & Benedict,	35 40	1 11
9	Charles S. Tuck,	20 19	63
10	Mooney & Buetter,	18 75	59
11	A. A. Putnam,	191 19	5 99
12	The Acme Sign Printing Co.	269 21	8 42
14	J. W. Bruhnke,	7 00	22
15	City National Bank of Dixon,	10,500 00	328 51
16	Dixon National Bank,	3,675 00	114 98
17	Philip Hano & Co.	270 72	8 47
18	George G. Pope & Co.	225 28	7 05
19	S. N. Juneau,	213 91	6 69
20	Henry Shanovosky,	100 00	3 13

Exhibit A—List of creditors who have complied with order of May 17.

No.	Claimant.	Amount of Claim.	Pro rata Assessment on each claim
21	Mullen & Co.	$ 901 05	$ 28 1
22	Phelps, Dodge & Palmer Co.	143 60	4 3
23	The Sewing Machine Supplies Co.	338 32	10 3
26	"The Cherry Circle,"	45 00	1 4
27	H. A. Brake & Bros.	33 85	1 0
28	Charles F. Baker & Co.	30 89	9
29	Wilder & Company,	167 90	5 2
30	Wilder & Company,	4,595 95	143 7
31	Michael Coffey	8 55	2
33	Henry B. George & Co.	2,660 80	83 2
34	Osgood & Co.	8 65	2
37	G. S. Mackenzie,	40 00	1 2
38	C. E. Robertson,	14 40	4
39	The Tuchfarber Co.	360 00	11 2
41	E. A. Fargo,	1,973 33	61 7
42	Colburn, Fuller & Co.	692 56	21 6
44	Daniel Curran.	26 64	8
45	B. F. Shaw.	21 40	6
46	The Cycling West Publishing Co.	102 00	3 1
47	David Cummings & Co.	907 20	28 3
50	Pfister, Vogel Leather Co.	17,557 90	549 3
51	James H. Wilkinson.	80 38	2 5
52	John V. Farwell & Co.	196 22	6 1
53	Franklin MacVeagh,	93 75	2 9
54	Henry Kleine & Co.	48 60	1 5
55	The United States Leather Co.	9,887 25	309 3
57	J. Weil & Bros.	258 36	8 0
60	The Barbour Brothers Co.	407 94	12 7
61	A. W. Hayward & Co.	32 45	1 0
62	The Sachs Shoe Mfg. Co.	56 70	1 7
63	Tubular Rivet & Stud Co.	1,069 77	33 4
64	Chicago & Eastern Illinois R. R. Co.	30 83	9
65	J. R. Leeson & Co.	193 80	6 0
66	The Ross, Mayer Mfg. Co.	703 98	22 0
67	P. A. Field & Co.	729 74	22 8
68	Grand Detour Plow Co.	16 28	5
69	Albert Trostel & Sons.	15 44	4
70	McKay, Bigelow Heeling Machine Ass'n.	214 23	6 7
71	Eagle Tanning Works.	2,500 24	78 2
72	Frank W. Wichter & Co.	4 31	1

	Claimant.	Amount of Claim.	Pro rata Assessment on each Claim.
74	The American Oak Leather Co.	$13,160 00	$411 73
77	S. A White.	12 50	39
78	The Davis Boot & Shoe Co.	629 63	19 70
79	Wilbur H. Davis & Co.	52 45	1 64
80	Dana C. Johnson,	5 06	16
81	Humiston, Keeling & Co.	30 00	94
82	Alfred S. Hottle,	241 51	7 56
83	C. M. Vom Baur,	9 76	31
84	The R. Hoehn Co.	228 37	7 15
85	Shoe & Leather Review,	92 31	2 89
86	A. H. Putnam & Co.	117 00	3 66
87	Willimantic Linen Co.	292 40	9 15
88	A. C. Lawrence & Co.	176 25	5 51
93	Woelfel Leather Co.	1,125 00	35 20
95	Kimball Brothers Shoe Co.	1,473 75	46 11
96	Gane Bros. & Co.	13 50	42
97	George H. Hahn,	6 00	19
99	J. G. Phinney Counter Co.	187 20	5 85
00	Champion Nailing Machine Co.	388 20	12 15
01	John P. Kennedy,	14 75	46
02	W. Beck & Sons,	6 88	21
03	Estella Fletcher,	10 08	31
04	Lizzie Daw,	1 66	05
05	George H. Squires,	42 24	1 32
06	J. Walter Thompson Co.	22,452 68	702 46
07	Henry Schnellbach,	3 53	11
08	H. M. George & Co.	199 50	6 24
09	Regent Manfg. Co.	233 87	7 32
10	Goodyear Rubber Co.	70 00	2 19
11	University of Chicago,	33 17	1 04
12	Goldsmith, Rosenbush & Levie.	43 35	1 36
13	Shattuck & Binger,	705 00	22 06
14	The Singer Manfg. Co.	74 72	2 33
15	Cycling Gazette,	100 00	3 13
16	J. H. Mayer,	292 00	9 13
17	W. J. McBride,	78 95	2 47
18	Boston Blacking Co.	699 75	21 90
19	Chase, Merritt & Co.	504 25	15 78
20	Carson-Pirie Monthly Co.	54 50	1 70
21	Dry-Goods Reporter Co.	100 00	3 13
22	Continent Shoe Co.	32 88	1 04
23	T. J. Shay & Co.	55 80	1 75

Exhibit A—List of creditors who have complied with order of May 17, 1897.

Exhibit A—List of creditors who have complied with order of May 17, 1895.

No.	Claimant.	Amount of Claim.	Pro rata Assessment on each Claim
123	C. C. Farwell & Co.	$1,957 50	$ 61
125	A. F. Gallum & Sons.	409 51	12
126	Lambeau Leather Co.	6,961 76	217
127	Thilmany Pulp & Paper Mills,	115 70	3
128	Milwaukee Tack Co.	42 38	1
129	Stowe Bills & Hawley,	219 00	6
130	Weir Bros. Paper. Co.	14 9	
131	W. W. Spaulding,	1,160 84	36
132	H. Michaels & Co.	215 76	6
133	Farnsworth, Hoyt & Co.	520 95	16
134	Calvert Lithographing & Engraving Company.	315 00	9
135	Fletcher Manfg. Co.	1,181 60	36
136	Carver Cottin Gin Co.	53 10	1
137	Rousmaniere, Williams & Co.	$ 184 48	$ 5
138	B. E. Cole & Co.	2,500 00	78
139	Crooks, Root & Co.	96 30	3
140	Wachusett Mills,	175 00	5
141	M. L. Hiller & Sons,	1,609 52	50
142	L. A. W. Bulletin & Good Roads,	462 10	14
143	Spring, Virtue & Co	186 50	5
144	The Trip Giant Leveller Co.	121 50	3
145	F. H. Van Ingen & Co.	1,078 09	33
146	Pliable Shoe Co.	59 63	1
147	Easton Boot & Shoe Co.	5,562 67	174
148	A. W. Shaw & Co.	2,470 00	77
149	Hillard & Merrill,	744 30	23
150	Estabrook Anderson Shoe Co.	10,000 00	312
151	A. J. Marcus & Co.	273 40	8
152	Consolidated Hand Method Lasting Machine Co.	285 33	8
153	The R. J. Gunning Co.	617 14	19
154	George H. Van Pelt,	1,115 98	34
155	I. P. Farnum,	45 45	1
156	Gus Weimerstrom,	655 00	20
157	Consumers Box Manfg. Co.	400 46	12
158	Hurley Printing Co.	685 30	21
159	Frank E. Hansel,	9 73	
160	Julius Klueffer Paper Box Co.	1,183 05	37
161	M. H. Merriam,	102 25	3
162	Weymouth Shoe Supply Co.	4,590 47	143
163	W. W. Shinkle,	9 63	

Claimant.	Amount of Claim.	Pro rata Assessment on each Claim.
Thomas & Co.	$ 515 53	$16 14
A. C. McClurg & Co.	23 28	72
Chicago Directory Company,	261 00	8 17
Lucius Beebe & Sons, (Filed May 21, 1897—nunc pro tunc as of April 15/97 under order of Court entered May 21, 1897.)	7,095 00	221 98
Total,		$5,113 85

EXHIBIT B.

Exhibit B—List of creditors who have not complied with order of May 17, 1897.

owing amount of each claim under said Order of May 17, D. 1897, and the amount which each should contribute pro rata, e Fees and expenses referred to in said Order:

Claimant.	Amount of Claim.	Pro Rata Assessment paid on each claim.
B. D. Eisendrath & Co.	$ 164 32	$ 5 14
L. E. Lunda.	6 45	20
John B. Mallers.	14,594 19	456 59
New York Shield Co.	254 83	7 98
Magie Brothers.	34 24	1 07
S. Freehling & Son.	47 17	1 48
L. W. Haynes.	9 00	28
Charles S. Eveland.	3 85	12
"American Illustrated."	33 00	1 04
L. B. Williams & Sons.	110 87	3 47
Victor Lebre.	6 13	19
C. Bokius.	32 28	1 01
E. G. Stearns & Co.	31 43	98
Sinsheimer, Bach & Co.	10 63	33
W. W. Reid.	143 61	4 50
N. L. Millard & Co.	66 32	2 07
Grand View Hotel.	1,000 00	31 29
Ashland Shoe & Leather Co.	36 90	1 16
Total.		$518 90

Endorsed) Filed May 29th, 1897.

S. W. BURNHAM,
Clerk.

(By direction notice to creditors and Exhibit C omitted.)

Order of May 29, 1897.

151 And on the same day, to-wit, the 29th day of May, 189[7] the May Adjourned Term of said Court, in the record of p[ro]ceedings thereof in said entitled cause before the Hon. Peter Grosscup, District Judge, appears the following entry, to-wit:

152 ORDER OF MAY 29, 1897.

UNITED STATES CIRCUIT COURT,

Northern District of Illinois,

Northern Division.

Saturday, May 29, 189[7]

Present Hon. Peter S. Grosscup, District Judge.

American Oak Leather Company,
vs. 24238.
C. H. Fargo & Co. et al.

Order approving Master's report

On reading and filing the report of Master in Chancery, H[enry] W. Bishop, and upon consent of counsel for the respective par[ties] it is ordered that said report be, and the same, is hereby in [all] respects approved and confirmed, said report relating to the ass[ess]ments of and payments by creditors as heretofore ordered by [the] Court.

Order to pay Newman, Northrup & Levinson $5,113.85.

And it is hereby further ordered and decreed that said Mas[ter] Bishop, forthwith pay to Messrs. Newman, Northrup and Levi[nson] the sum of Five Thousand one Hundred and Thirteen Dollars [and] eighty-five cents, as shown by said report to be the pro[per] 153 of said assessments and payments.

Order to pay Master $300.

It is further ordered that said Newman, Northrup and Le[vin]son pay the Master, H. W. Bishop, out of said funds of $511[3] the sum of $300.00 in payment of the Master's services in the m[at]ter of said assessments with leave to said Newman, Northrup [&] Levinson to move for reimbursement of said amount out of [the] funds in the hands of the Receiver at any time before final dec[ree] in this cause.

Afterwards, to-wit, on the 25th day of June, 1897, in the May Adjourned Term of said Court in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, District Judge, appears the following entry, to-wit:—

United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES.

In and for Said District.

Friday, June 25, 1897.

Present, Hon. Peter S. Grosscup, District Judge.

American Oak Leather Co.
vs. } Gen. No. 24,238.
H. Fargo & Co. et al

Order of June 25, 1897, as to Grand View Hotel Co.

On reading and filing the petition of Grand View Hotel Company, and it appearing to the Court that said Grand View Hotel Company has paid the assessment levied by the Court against it as set forth in said petition, and the Court being fully advised in the premises, and with the consent of counsel, doth order

That the report of Master in Chancery Henry W. Bishop, filed herein on the 29th day of May, A. D. 1897, be and the same is hereby amended by striking the name of Grand View Hotel Company from the list of creditors who have not paid said assessment, as appears in said report of said Master, and placing it in the list of creditors who have paid said assessment. And it is further ordered by the Court, that the claim of said Grand View Hotel Company be not disallowed by reason of its non-compliance with the order entered herein on the 17th day of May, A. D. 1897, and that said Grand View Hotel Company be allowed to share in the proceeds of said estate.

Afterward, to-wit, on the 3rd day of July, 1897, there was filed in the office of the Clerk of said Court Receiver's Report of Assets, in the following words and figures, to-wit:—

157 United States of America, }
Northern District of Illinois, } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES

For the Northern District of Illinois.

The American Oak Leather Company, } In Equity.
vs. } Gen. No. 24,238.
C. H. Fargo & Co., et al. }

RECEIVER'S REPORT OF ASSETS.

Receiver's report of assets, filed July 3, 1897.

Henry W. Bishop, Receiver appointed herein by order of C[ourt] entered January 18th, 1897, respectfully reports unto the C[ourt] that on the 26th day of February, 1897, he duly qualified as R[eceiver] Receiver by filing with the Clerk of this Court his bond in the of $150,000, as required by said order, which said bond was on same day duly approved by said Clerk; that afterwards to-wit the 17th day of March, 1897, he received from Messrs. Isham, L[incoln] & Beale, solictors for the defendants the United States Rub[ber] Company and L. Candee and Company, a letter in the words figures following, to-wit:

Chicago, March 15th, 189[7]

Henry W. Bishop, Esq., Receiver of C. H. Fargo & Co., [Mon]nadnock Block, City.

Dear Sir—In the case of the American Oak Leather Company C. H. Fargo & Co., et al., now pending in the United S[tates]
158 Circuit Court for the Northern District of Illinois as No. 24,2[38] the order entered by Judge Grosscup on January 18th, 1[897] appointing you Receiver, directed certain affirmative action on part of the defendants. So far as these directions were addressed the defendants United States Rubber Company and L. Candee Company and to us as their solicitors, we do hereby comply with same as hereinafter stated.

First: Said order directs the defendants United States Rub[ber] Company and L. Candee and Company and us as their solicit[ors] to deliver to you all the books and papers of said C. H. Farg[o] Co. that on or about the fifth day of August, 1896, came into t[he] or our hands, possession or control.

Receiver's report of assets, filed July 3, 87.

By your direction all the books and papers of C. H. Fargo & Co. which came into the possession of said two defendants or of themselves as their solicitors, except as hereinafter stated, were on March 3rd, 1897, packed in ten (10) cases and stored in Warehouse No. 279 to 285 Monroe St., Chicago, belonging to the International Warehouse Company. We enclose herewith receipt of that company for said cases, bearing that date. By your directions we have also caused said cases to be insured in your name for the sum of Two Thousand (2,000) Dollars, by Policy dated March 8th, 1897, of the Palatine Insurance Company, No. 1,105,589, which we send you herewith.

We herewith transmit to you the book containing the minutes of the corporate meetings of said C. H. Fargo & Co.

The only other books and papers of C. H. Fargo & Co. which have come to the possession or control of said two defendants or ourselves as their solicitors are the following books, which are necessary to be used in connection with the collection of the accounts, to wit:

Five (5) ledgers of two (2) volumes each, lettered AA, BB, CC, DD, EE, respectively; One (1) City and Eastern Ledger lettered BB; One (1) City Sales Ledger; One (1) City and Eastern Purchases Ledger; One (1) General Ledger; Five (5) Journals of two (2) volumes each, lettered K, L, M, N and O, respectively; One (1) General Journal; Four (4) Cash Books numbered 1, 2, 3 and 4 respectively; twenty-three (23) Bill Files; Five (5) Bill Books; Three (3) Ledger indexes; One (1) Receipt Book, and one Memorandum Ledger Rubber Goods.

By your direction and as your solicitors, and pursuant to the order of Court entered in said cause on March 4th, 1897, we retain the last mentioned books in our hands, to be used by us in the collection of said accounts.

Second: Said order of January 18th, 1897, further directs the United States Rubber Company, L. Candee and Company and themselves as their solicitors to deliver to you as such Receiver a full itemized statement showing in detail all their or our acts and things on and since the fifth day of August, 1896, in the matter of the collection or enforcement of any claim or indebtedness due or owing C. H. Fargo & Co., and to deliver and pay over to you all proceeds of accounts receivable, choses in action or bills receivable of C. H. Fargo & Co. which have come into the possession or con-

Receiver's report of assets, filed July 3, 1897.

trol of said two defendants or of ourselves since said August 1896.

(a) We have now in preparation and will send you as so completed the full itemized statement so required and also an ized statement of our necessary disbursements made in conne with the collection or enforcement of such indebtedness an counts.

(b) We enclose herewith check No. 52, dated March 1897, on the Commercial National Bank of Chicago, signe United States Rubber Company, per Isham, Lincoln & Beale, ble to the order of Henry W. Bishop, Receiver, etc., for the of Thirty-one Thousand Eight Hundred Ninety-four and th 160 six hundredths (31,894.36) Dollars. This sum is the amount of all moneys received by us or by said two Ru Companies from the assets of C. H. Fargo & Co. and the co tion of their accounts and choses in action, from August 5th, down to February 26th, 1897, the date when you qualified a ceiver, after deducting the necessary disbursements made in con tion with the collection thereof and allowing such credits a authorized by said order—all of which will be particularly sh by the itemized statement above menioned.

(c) During the collection of said accounts a number of which had been shipped by C. H. Fargo & Co. to its custo prior to August 6th, 1896, were returned by them to United S Rubber Company for various reasons, e. g., that the shoes were as ordered, that they were not ordered to be sent, that they merely consigned for sale, etc., etc. These shoes are now in store of United States Rubber Company, No. 244 Monroe St Chicago, and are hereby made subject to your direction and con They are of little value.

Third. Said order further directs the said United States Ru Company and L. Candee and Company to deliver to you as receiver all the chattel property contained in the C. H. Farg Co. factory at Dixon, Illinois, including stock on hand, goods m factured and in process of manufacture, goods, wares and chandise and all other chattels purchased by them or either of t or by any person for them from the United States Marshal.

All of the chattel property purchased by either of said Rub Companies from said United States Marshal is still in the C Fargo & Co. factory at Dixon, Illinois. That property is her made subject to your control and direction. Mr. Charles E. Far

r., who lives at Dixon, Illinois, has had actual custody of said property for us as solicitors of said Rubber Companies ever 61 since it was so purchased and he now has custody of the same.

Receiver's report of assets, filed July 3, 1897.

We have already informed him that the property is now under our control, and by your direction we have retained him as custo- an for you until such time as you may wish to make other arrange- ents. The factory building and land was purchased from C. H. argo & Co. by the Metropolitan National Bank of Chicago, and it ill no doubt permit the chattel property to remain there as long as esired. There is some question whether the machinery in the ctory, or at least a portion of it, belongs to the Bank as xtures to the real estate or whether said machinery is attel property and therefore within the terms of said rder. This is a matter for future adjustment All of id chattel property in said factory is covered by insurance the aggregate amount of Forty Thousand (40,000) Dol- rs. The policies were issued to the United States Rubber Com- ny on August 25th, 1896, and will expire on August 25th, 1897. nce you qualified as Receiver we have caused an addendum to be ttached to each of the policies, making the loss, if any, payable to ou as such Receiver. We herewith send you said policies, which re particularly described as follows:

o. 2,802,280	Norwich Fire Ins. Soc.	$ 5,000
o. 13,658	German Am. Ins. Co. of N. Y	5,000
o. 100,049	Union Assurance Society	10,000
o. 1,254,350	Union Assurance Society	5,000
o. 1,254,347	Union Assurance Society	5,000
o. 460,340	The Palatine Ins. Co	5,000
o. 3,431,783	The Lancashire Ins. Co	5,000

For your information, we beg to inform you that during several ars prior to August 5th, 1896, C. H. Fargo & Co. turned over the law firm of Cratty Brothers, Jarvis and Cleveland from time time such of its accounts as were uncollectible in the usual course f business, and that on that date a number of said accounts re- mained, and they still remain, in the hands of said law firm. Neither the said Rubber Companies nor ourselves have re- ceived from said law firm such accounts, nor have they or we e a complete list thereof. In accordance with your directions ven verbally the other day we shall request Messrs. Cratty rothers, Jarvis & Cleveland to render to you at their earliest con- enience a statement of said accounts, together with any moneys hich may have been collected thereon by them.

Receiver's report of assets, filed July 3, 1897.

With the exception of the itemized statement which we expect submit to you in a few days, as hereinbefore stated, we believe t letter, with its enclosures, constitutes a full compliance with s order of January 18, 1897, so far as the same is mandatory United States Rubber Company, L. Candee and Company and o selves. We shall be pleased, however, to take any further ste which you may deem expedient or proper in order to invest y with possession and custody of any of the property affected by t order.

Very Respectfully Yours,

(Signed) ISHAM, LINCOLN & BEALE.

Encs.

That on the same day, and accompanying said letter, he receiv from Messrs. Isham, Lincon & Beale

(1) Storage receipt of International Warehouse Co. to Isha Lincoln & Beale, dated March 3rd, 1897, for ten (10) cases of book etc.

(2) Insurance Policy No. 1,105,589 in the Palatine Insuran Company, dated March 8th, 1897, for $2,000, payable to Henr W. Bishop as Receiver, covering said ten (10) cases of Books.

(3) Minute book C. H. Fargo & Company, containing minut of corporate meetings.

(4) Check No. 52 of United States Rubber Company, p Isham, Lincoln & Beale, dated March 12th, 1897, upon the Co mercial National Bank of Chicago, payable to order of Henry W Bishop, Receiver, etc., for the sum of $31,894.36—said s 163 being stated in said letter to be the net amount of all mone received by United States Rubber Company and L. Candee an Company and Isham, Lincoln & Beale, their solicitors, from the a sets of C. H. Fargo & Co. and the collection of its accounts fr August 5th, 1896, down to February 26th, 1897 (the date of qua fication of this Receiver) after deducting necessary disbursemen and expenses in connection therewith.

(5) Insurance Policies covering chattel property now in the C H. Fargo & Co. factory at Dixon, Illinois, issued August 25 1896, to United States Rubber Company for one year each, co taining an addendum making loss if any payable to Henry W Bishop as Receiver as follows:

2,802,280	Norwich Union Fire Ins. Soc	$ 5,000	Receiver's report of assets, filed July 3, 1897.
13,658	German Am. Ins. Co. of N. Y	5,000	
100,049	Union Assurance Society	10,000	
1,254,350	Union Assurance Society	5,000	
1,254,347	Union Assurance Society	5,000	
460,340	The Palatine Ins. Co	5,000	
3,431,783	The Lancashire Ins. Co	5,000	

That by said letter this Receiver was put in possession and con- of all the chattel property contained in the C. H. Fargo & Co. ory at Dixon, Illinois, including the stock on hand, goods man- tured and in process of manufacture, goods, wares and mer- dise, and all other chattels purchased by the United States ber Company from John W. Arnold, United States Marshal; t in and by said letter this Receiver was also put into possession small number of boots and shoes which had been returned by tomers of C. H. Fargo & Co. after August 6th, 1896, and which now located in the store of the United States Rubber Company 244 Monroe street, Chicago; that in and by said letter this Re- ver was also put into control and possession of the current books account of C. H. Fargo & Co. as stated in paragraph first, di- ion (c) in said letter; and that afterwards, to wit, on the 19th of April, 1897, Messrs. Isham, Lincoln & Beale as solicitors United States Rubber Compnny and L. Candee and Company nished and delivered to this receiver a report, dated April 16th, 1897, containing a full itemized statement showing in detail all their acts and doings on and since the 5th day of August, 1896, in the matter of the collection or enforcement of accounts and owing C. H. Fargo & Co. and showing collections by them ounting to $34,839.30, expenses by them in connection with such ections and the care of the chattel property amounting to 944.94, and a net amount to be turned over to this Receiver, er order of Court dated January 18th, 1897, of $31,894.36, being the amount of the check theretofore delivered to this iver aforesaid—which report this Receiver files herewith as ibit "A" hereto.

This Receiver further reports that as required by said order of uary 18, 1897, the defendant John W. Arnold, United States rshal, did on March 18, 1897, turn over and deliver to this Re- ver the sum of $58,915.85 as and for the total amount of moneys ived by said Marshal upon the executions mentioned in said r against C. H. Fargo & Co., and in favor of the United States ber Company and L. Candee and Company, respectively, after

Receiver's report of assets, filed July 3, 1897.

deducting the fees, expenses and disbursements of said Marsha
connection with the levies and sales under said executions.

This Receiver further reports that the delivery to this Receiver
all the property and the report above mentioned was, so far as he
advised, a substantial and complete compliance by John W. Arn
United States Marshal, and by the United States Rubber Compa
L. Candee and Company and Messrs. Isham, Lincoln & Beale,
their solicitors, with so much of said order of January 18th, 18
as was mandatory to them or either of them.

This Receiver further reports that Messrs. Isham, Lincoln
Beale have made no claim as yet for their services in connect
with the care of property and collection of accounts of C.
165 Fargo & Co. between August 5th, 1896, and February 2
1897, and therefore he can not at this time report upon th
matter as required by said order of Court. He is informed by Mess
Isham, Lincoln & Beale that they will present their claim for s
services at some future time.

With respect to that provision of said order of January 18, 18
which directed the defendant C. H. Fargo & Co., its officers a
agents, to execute and deliver to this Receiver a general assignm
and conveyance of all its property, this Receiver reports that he
used due diligence to secure said assignment, but that since he qu
fied as Receiver Mr. Charles E. Fargo, President, and Mr. F
Fargo, Vice President of said defendant corporation has been c
tinuously, as he is informed, absent from Chicago, and thereb
such assignment has not yet been made. Mr. Buell McKeever,
Secretary of the Company, is in Chicago, but as this Receiver is
formed, he has no knowledge of any kind respecting any assets
the Company, not now in the hands of this Receiver.

This Receiver further reports that pursuant to an order of Co
entered in this cause, dated March 4, 1897, he employed Mess
Isham, Lincoln & Beale as his solicitors to assist him in the dut
of his Receivership; that he instructed his said solicitors to c
tinue the collection of the book accounts of C. H. Fargo & Co
that he permitted to remain in the hands of his said solicitors t
current ledgers, account books, etc., of C. H. Fargo & Co. n
essary to be used in connection with said collections; that his s
solicitors now have possession of said current account boo
166 and since said last mentioned date they have been are now
ing every effort to accomplish the speedy collection of the
counts; that he has caused an inventory to be made of all the

Receiver's report of assets, filed July 3, 1897.

nding uncollected accounts appearing upen the books of C. H rgo & Co. on February 26th, 1897, the date of his qualification Receiver (except accounts previously collected or settled by ited States Rubber Company, as shown by "Exhibit A" hereto), ich inventory he has filed herewith marked Exhibit "D" to this ort: that he also caused to be made an inventory of all the chat property in the C. H. Fargo & Co. factory at Dixon, Illinois cluding the machinery which is claimed by the Metropolitan Nanal Bank of Chicago, and other persons to be fixtures to the real tate, which inventory he has filed herewith as Exhibit "B" to s report; that he has also caused to be made an inventory of the ts and shoes in his custody situated in the store of the United tes Rubber Company at 244 Monroe Street, Chicago, Illinois, ich inventory he has filed herewith marked Exhibit "C" to this ort; and that pursuant to the direction of the Court contained said order entered in said cause on the 4th day of March, 1897, did on March 18th, 1897, deposit with the Equitable Trust mpany said sum of $31,894.36, turned over to him on that date Messrs. Isham, Lincoln & Beale as aforesaid, and also said sum $58,915.85 turned over to him by the United States Marshal as resaid, taking from said Trust Company a certificate of deposit said sums payable to Henry W. Bishop as Receiver of the as- of C. H. Fargo & Co., bearing interest at the rate of three (3) cent per annum, upon certain conditions respecting withdrawal.

This Receiver further reports that on June 16, 1897, an order was ered in this cause directing him to sell at private sale to The American Oak Leather Company, for the sum of $12,300, all of the chattel property in said factory at Dixon, Illinois, excepting the machinery (and machinery parts connected thereh, affixed or in any way attached to the real estate constituting factory premises, and to execute a bill of sale therefor: that er and pursuant to said order, this Receiver did, on June 17, 7, sell said property to said The American Oak Leather Comy for said sum of $12,300, in cash, and did on the same day execute a bill of sale therefor to the purchaser, attaching to making a part of said bill of sale a copy of said inventory ked Exhibit "B"; and that thereupon this Receiver deposited sum of $12,300 with the said Equitable Trust Company as di- ted by said order of March 4, 1897, and took from said Comy a certificate of deposit similar in form to the first mentioned tificate. The said chattel property at Dixon, so sold as afore- d, is now being checked off with said inventory jointly by a repentative of this Receiver and a representative of said purchaser.

Receiver's report of assets, filed July 3, 1897.

Upon the completion of said sale the policies of insurance above specified, covering the property sold, were by the di of this Receiver cancelled.

This Receiver further reports that at the time C. H. Fa Co. suspended business, to-wit, on or about August 6, 18 attorneys, Messrs. Cratty Brothers, Jarvis and Cleveland, h their hands for collection a number of its old book accounts, collectible in the usual course of business, which accounts sti main in the hands of said attorneys; that on June 24, 1897, attorneys turned over to Messrs. Isham, Lincoln and Beale, s ors for this Receiver the sum of $1,562.87 as and for the net am of all collections upon C. H. Fargo & Co. accounts in their h after first deducting their costs and disbursements in conn therewith; and also delivered an itemized statement of 168 collections. Said sum of $1,562.87 is now in the hand this Receiver.

The following is a summary of the assets now in the hands of Receiver, not including collections on the accounts of Rece solicitors since February 26, 1897.

First. Books of account of C. H. Fargo & Co. containing collected accounts of February 26, 1897, as shown by said Ex "D," subject to collections and settlements made since that by Messrs. Isham, Lincoln & Beale, as solicitors for this Rece

Second. Shoes returned since August 6, 1896, as shown by hibit "C."

Third. Machinery and machinery parts connected there affixed or in any way attached to the factory premises at Du Illinois, the title of this Receiver to which is disputed by the M ropolitan National Bank and certain lienors.

Fourth. Cash received from United States Marshal on March 18, 1897, and now deposited with Equitable Trust Company ..... $ 58,915

Fifth. Cash received from Messrs. Isham, Lincoln & Beale, as net amount of collections made prior to February 26, 1897, now on deposit with Equitable Trust Company 31,894

Receiver's report of assets, filed July 3, 1897.

Sixth. Cash received from The American Oak ather Company on sale of Dixon chattel property ept machinery—on deposit with Equitable Trust mpany..... 12,300.00

Seventh. Cash received from Messrs. Cratty tters, Jarvis & Cleveland, as net collections by m to June 24, 1897..... 1,562.87

Total cash..... $104,673.08

Respectfully reported,

HENRY W. BISHOP,
Receiver.

Dated, Chicago, July 3rd, 1897.

And on the same day, to-wit, the 3rd day of July, 1897, in the May Adjourned Term of said Court, in the record of proings thereof in said entitled cause before Hon. Peter S. Grosscup District Judge, appears the following entry, to wit:

United States of America,
Northern District of Illinois. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES,

For the Northern District of Illinois.

Saturday, July 3, 1897.

Present, Hon. Peter S. Grosscup, District Judge.

American Oak Leather Company
vs.
C. H. Fargo & Co., et al. } In Chancery. Gen. No. 24,238.

Order allowing receiver $1,000 on account for services.

Upon application of the Receiver in this cause and by consent of the parties hereto, it is ordered that the receiver be and he is hereby allowed the sum of One Thousand Dollars ($1,000.00) upon account for his services as such Receiver herein.

It is further ordered that said Receiver pay himself said amount

out of the funds in his custody as Receiver, and that for the t being said sum be charged to said funds, reserving to the defe ants the United States Rubber Company, L. Candee and Compa and Metropolitan National Bank, who object to charging said p ments against the funds in the custody of the Receiver, full ri hereafter to press their contention that none of the receivers expenses in this cause should or can be lawfully charged against funds in the possession of the Receiver claimed by said defend or some of them.

171 Afterwards, to-wit on the 2nd day of October, 1897, in t July Term of said Court in the record of proceedings thered said entitled cause before the Hon. William J. Allen, District Judg appears the following entry, to-wit:—

Order of Oct. 2, 1897, allowing New York Shield Co. to file claim.

172 ORDER OF OCTOBER 2, 1897.

UNITED SATES CIRCUIT COURT,

Northern District of Illinois,

Northern Division.

Saturday, October 2, 1897.

Present: Honorable William J. Allen, District Judge.

American Oak Leather Company
vs.
C. H. Fargo and Company. } 24,238.

On reading and filing the stipulation this day filed herein and appearing to the court that all parties in interest have had due n tice of this proceeding, and the court being fully advised in t premises, it is ordered that the claim of the New York Shield Co pany against C. H. Fargo & Co. for the sum of two hundred a fifty-four and 83/100 dollars ($254.83) may be filed nunc pro tun as of April 15, 1897, with Henry W. Bishop, Master in Chancer under the order entered herein on March 11, 1897.

And on the twenty-sixth day of November, 1897, came the merican Oak Leather Company by its solicitor, and filed in rk's office of said court its replication to the answers of States Rubber Company, L. Candee & Company and Met-an National Bank, which said replication is in the words and following, to wit:

REPLICATION TO ANSWERS

Replication of American Oak Leather Co filed Nov. 26 1897.

ited States Rubber Co., L. Candee & Company and Metropolitan National Bank.

d States of America,
rn District of Illinois, } ss.
orthern Division.

In the United States Circuit Court of said District.

rican Oak Leather Company
vs. } Gen. No. 24,238.
C. H. Fargo & Co. et al.

replication of American Oak Leather Company, complainant, nswers of United States Rubber Co., L. Candee & Com-nd Metropolitan National Bank, filed herein.

repliant saving and reserving to itself now, and at all times er, all and all manner of benefit and advantage of exception may be had or taken to the manifold insufficiencies of the id answers, and each of them, of the said defendants for re-ication thereunto, says that it will aver, maintain and prove bill of complaint to be true, certain and sufficient in law to vered unto, and that the said answers of each of them of said nts, United States Rubber Company, L. Candee and Com-nd Metropolitan National Bank are uncertain, untrue and in-nt to be replied unto by this repliant, without this, that any matter or thing whatsoever, in the said answer contained, l or effectual in law to be replied unto and not herein and well and sufficiently replied unto, confessed and avoided, ed or denied, is true. All which matters and things this t is ready to aver, maintain and prove as this Honorable

Court shall direct, and humbly prays as in and by its said bi
has already prayed.

NEWMAN, NORTHRUP & LEVINSON,
Solicitors for Complainan

(Endorsed) Filed Nov. 26, 1897.

S. W. BURNHAM,
Cler

175 Afterwards, to-wit, on the 29th day of November, 189
the October Adjourned Term of said Court, in the reco
proceedings thereof in said entitled cause before the Hon. Pet
Grosscup, District Judge, appears the following entry, to-wit:

176 United States of America,
Northern District of Illinois, } ss.
Northern Division.

Order of Nov. 29, 1897, referring cause to Master.

IN THE CIRCUIT COURT OF THE UNITED STATES

In and for said District.

Monday, November 29, 189

Present: Hon. Peter S. Grosscup, District Judge.

American Oak Leather Company
vs. } No. 24,238.
C. H. Fargo et al.

This cause coming on to be heard on motion of complain
herein to have said cause referred to a Master in Chancery to t
proofs and report the same, together with his conclusions there
and it appearing to the Court that all parties in interest have h
due notice of this proceeding, and the Court being fully advised
the premises, it is

Ordered, that the above entitled cause be, and the same is here
referred to Henry W. Bishop, Master in Chancery of this Court,
take proofs herein and report the same, together with his conc
sions thereon as to the facts only.

Afterwards, to-wit, on the 16th day of June, 1898, in the May adjourned Term of said Court, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, District Judge, appears the following entry, to-wit:—

ORDER OF JUNE 16, 1898.

Order of June 16, 1898

UNITED STATES CIRCUIT COURT

Northern District of Illinois—

Northern Division.

Thursday, June 16, 1898.

Present Hon. Peter S. Grosscup, District Judge.

American Oak Leather Company,
vs. 24238.
C. H. Fargo and Company.

Upon the application of Henry W. Bishop, Master in Chancery, to whom said cause has been referred, It is ordered by the Court, the parties consenting, that the sum of Five hundred ($500) dollars be and is hereby allowed said Master on account for his services in the taking of testimony in said cause and expenses of stenographer employed by him, and said Master who is also receiver in said cause is hereby authorized to draw his check as such receiver upon the moneys received and deposited by him as receiver in this cause, for said sum of $500.00 as an advance by the receiver to the taxable costs.

Afterwards, to wit, on the 17th day of April, A. D. 1899, there was filed in the office of the Clerk of said Court, Master's report, in the following words and figures, to-wit:

180 United States of America.
Northern District of Illinois. } ss.
Northern Division.

Master's report, filed Apr. 17, 1899

IN THE CIRCUIT COURT OF THE UNITED STATES

Northern District of Illinois,

Northern Division.

American Oak Leather Company,
vs.
C. H. Fargo & Co., et al. } No. 24,238. In Chancery.

MASTER'S REPORT.

Under order of the Court entered in said cause November 2
1897,

To the Honorable Peter S. Grosscup: Circuit Judge:

This cause is before me upon an order made by the court on the 29th day of November, A. D. 1897, referring it to for the purpose of "taking proofs thereon and reporting the same to the Court "gether with my conclusions thereon as to the facts only."

In pursuance of this Direction I have been attended at various times by the solicitors of the parties interested, when a large amount of testimony was taken, and I have heard the arguments of counsel at great length.

Upon an application for the appointment of a receiver in this cause, a hearing was had before his Honor Judge Grosscup upon Bill, Answer and Affidavits, and in disposing of the matter granting the application, Judge Grosscup found upon the evidence before him that the claim that the defendants had been guilty of fraud in fact in connection with the transactions complained of, had not been established.

The inquiry now arises upon the entire record as now presented
181 This inquiry is limited to the period commencing on the 6th day of January, A. D. 1896, and ending on the 6th day of August of the same year.

Master's report, filed April 17, 1899.

f review at the outset of what occurred between the parties this time will be useful in leading up to the questions which be considered. The time between 1893 and 1896 which has referred to by counsel does not fall within the line of the inquiry, as no charge is made against the defendants, the ber Companies, based upon transactions which occurred this period, although it has been suggested that the familiar relations which then existed between C. H. Fargo & Co. defendants the Rubber Companies, furnished the latter an into the affairs of the C. H. Fargo Company which tended to its methods of business and indicated to some extent its er.

arriving at my conclusions I have however examined and ed all that occurred between the defendants the Rub- Companies and the defendants C. H. Fargo & Co. during nd last referred to, for the purpose of ascertaining the rela- etween them and the state of account between them up to the time of the alleged fraudulent dealings.

general facts and circumstances in connection with the found- the house of C. H. Fargo & Co., in 1871, the extent and er of its business, the organization in 1889 of the C. H. & Co., corporation which succeeded to the business, the con- f its affairs after the death of C. H. Fargo in 1892 by his ons, Charles E. Fargo, Frank M Fargo and Edward A. associated with four employees of the firm as directors, with nership of the entire capital stock of the corporation in the are not in dispute, neither does any question as to the rela- hich existed between the defendant, L. Candee & Company, Fargo Company, or as to the character and extent of the s transacted between them up to April 1st, 1895, when the siness of the Candee Company was assumed by the de- ndant, the United States Rubber Company, and the affairs tween the L. Candee & Company and the C. H. Fargo Com- ubsequently, in November following, adjusted—Fargo & ny executing plain notes for $44,900, the amount then to be due L. Candee & Company.

n the first day of April, 1895, the business of Candee & ny was merged in that of the defendant, the United Rubber Company, and from this date the entire rubber oe business, represented by the defendant, the United Rubber Company, which also included the product of the L. Company, was conducted under consignment contracts, and

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the dealings between United States Rubber Company and the F Company were also conducted under such contracts up to A 6, 1896, when the transactions complained of were consumm

There was due January 6th, 1896, to Candee & Company the notes of C. H. Fargo & Co. (given in settlement in Nove 1895), the sum of $44,900, and on the same date there wa from the Fargo Company to the United States Rubber Compan open account for proceeds of sale of consigned goods the s $141,537.13.

It is shown by the testimony, and I so find, that about Jan 2nd, 1896, the C. H. Fargo Co., anticipating difficulty in me its regular obligations maturing during that month, applied to Charles L. Johnson, who represented both the Candee Compan the United States Rubber Company, for a loan of $50,000, re senting that the Fargo Company was perfectly solvent and that accommodation would relieve it from its temporary embarrassm and enable it to go on with its business.

This application was granted, and on January 6, 1896, Jo agreed, acting for L. Candee Company, to lend the Fargo C pany the sum of $50,000 for six months upon the unders 183 ing that this loan and the indebtedness of $44,900 upo notes previously given as aforesaid and the balance du United States Rubber Company, and which might become du should be secured in such way as might be satisfactory to t counsel Mr. Beale, of the law firm of Isham, Lincoln & Beale

The proposition was accepted on the 6th day of January, 18 and it was agreed and arranged between the parties as follows:

First: That the $50,000 should be advanced to the Fargo Co pany by L. Candee & Co., partly on that date and during the s ceeding two weeks:

Second: That the Fargo Company should that day execute a deliver its three judgment notes, one for $45,000 payable on dema to the order of L. Candee & Company to secure that company w respect to its liability as endorser or guarantor upon the notes $44,900 given previous to January, 1896, one for $51,500 paya on demand to L. Candee & Company, as collateral security to pa notes of the Fargo Company which were given as evidence of t advance of $50,000 then to be made, and one for $140,000 pay ble on demand to the order of the United States Rubber Compan as collateral security to the then existing and to any future indeb

ess of the Fargo Company to the United States Rubber Com- Master's report filed April 1 1899
y as aforesaid.

Third: That in case the Fargo Company should at any time find necessary to suspend business, it would assign as additional urity all its accounts and bills receivable; that it should not give judgment notes to other creditors which would impair the se- ity to the Rubber Companies, and that the $50,000 advance ld be used by the Fargo Company in reduction of its general ebtedness as it matured; and

Fourth: That the four employees of the Fargo Company who e on the board of directors, and also E. A. Fargo, should retire m the board and there should be elected in their places by the stockholders of the Company five persons, to be nominated by said Beale, in whom he had confidence, one of whom should become secretary and treasurer, and that the directors so to be ted at Beale's nomination should not hamper or interfere with proper carrying on of the ordinary business of the company.

I further find that a proposed agreement in part embodying the resaid arrangement was drafted and discussed by the parties, h draft has been introduced in evidence, but that said proposed eement was never executed and was abandoned by the parties in or of a mere verbal understanding reinforced by the resolutions the stockholders' and directors' meetings of the Fargo Company. I find that the attention of the general creditors was never called this arrangement and they had no knowledge of it. The tropolitan National Bank first learned of it at or about time a judment note was given it to secure the payment of claim of $50,000 as hereinafter stated.

I find that in pursuance of this arrangement, and on January 6, 8, a meeting of the board of directors of the C. H. Fargo & Co., and before any change in said board, when a resolution was ed authorizing the borrowing of the $50,000, the giving of gment notes, as in said agreement provided for, and assignment he accounts, bills and choses in action upon the contingencies ed upon; and upon the same day the three judgment notes re- ed to were executed and delivered by Charles E. Fargo, Presi- of the Company, Frank M. Fargo, Vice-President and Treasurer, E. A. Fargo, Secretary, and the loan of $50,000 was perfected, ,000 being advanced at the time and the balance of $50,000 ng the succeeding two weeks.

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This action was ratified on the 8th day of January, 1896, unanimous vote of the stockholders of C. H. Fargo & Co., shares being represented.

I find that in pursuance also of said arrangement, and as
185 of it, at a meeting of the stockholders of C. H. Fargo & C
January 9, 1896, George C. Madison, Tiffany Blake, Bue
Keever, Frederick B. Fuller, Gilbert E. Porter, Charles E.
and F. M. Fargo were duly elected directors for the ensuing

The first five except Blake, were employees in the office of
iam G. Beale, and said Blake was assistant corporation co
of the City of Chicago, of which William G. Beale was
corporation counsel, and all five were elected by the
holders at the suggestion of said Beale. Subsequently, at a
ing of the newly constituted board, at which Charles E. Farg
re-elected President of the Company, Frank M. Fargo wa
elected Vice-President of the Company and Buell McKeever
elected Secretary and Treasurer of the Company, the by-law
the Company were amended providing against the giving of
ment notes or preferential security without special authorizatio
the board of directors.

I also find that the change of the board of directors and offi
and the changes of the by-laws of said company, and the resolu
thereof authorizing judgment notes and assignments of accoun
necessary, were all for the purpose of giving preferential secu
to the Rubber Companies and the matter was kept secret in orde
allow the Fargo Company an opportunity of getting through
barrassments apparently temporary but not with a fraudulent
tent as to the other creditors of the company. The only purp
and object of changing the board of directors as aforesaid and
amending the by-laws was to protect the Rubber Companies agai
the giving by the Fargo Company of preferential security or jud
ment notes to other of its creditors which should be superior to t
security of the Rubber Companies.

186 I further find that the arrangement as made was carried
in good faith by the parties and that the directors elected at t
suggestion of said Beale took no part in the active management
the Fargo Company after their election, and that no stockholder
or directors' meetings of the Fargo Company were held after Ja
uary 9th 1896, until August 5th, 1896.

I find that on January 9th, 1896, which was the date of t

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ting of the new directors, the authorized capital stock of the l corporation of C. H. Fargo & Co., was $400,000, and the s of the corporation on January 6, 1896, as follows:

Amount owing United States Rubber Company.	$141,537 13
Amount owing Candee & Company.....	44,900 00
Amount owing Metropolitan National Bank	50,000 00
Amount owing other creditors.....	210,216 20
Total.....	$446,653 33

find that the value of the assets of C. H. Fargo & Co., at that e had not been definitely ascertained, but I find as a matter of , as the results of efforts since made in collecting the same in idation and from other sources of information disclosed by the mony, that on the 6th day of January, 1896 the assets of said pany were not sufficient to discharge its indebtedness, of which the defendants the Rubber Companies are shown to have been ant, relying upon the representation of the Fargos that e was a large excess of assets over liabilities. The fact Johnson, representing the Rubber Companies, made no al examination of the assets of the company but consented to ce the money which was applied for, is evidence to my mind e believed in the assurances which were given him by the s of the condition of their company.

further find that between January 6th, 1896, and August 6th, 6, the new liabilities incurred by said corporation to creditors r than the Rubber Companies and the bank were $246,660.54, which there was due and unpaid on August 6th, 1896, $142,- 95; and that during the same period the Fargo Company paid more than $300,000.00 to its general creditors in the regular se of business, paying substantially all of the indebtedness of ary 6th, 1896, which was largely to the same persons who are creditors.

I further find that between January 6th, and August 6th, 1896, the Fargo Company continued its business as before, reducing its al indebtedness to a considerable extent with its general cred- ; that during said time it paid Candee & Company $44,900, mount of its indebtedness prior to January 6th, 1896, and $13,- on account of the advance of $50,000 as aforesaid; that during time it paid to the United States Rubber Company $15,000 on nt of the indebtedness to that company existing January but it also sold consigned goods of that company to the

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amount of $24,534.04, of which it remitted only $5,4
and that on August 6th, 1896, there was due to the United
Rubber Company the sum of $142,424.81, and to L. Ca
Company the sum of $36,530.00.

I further find from the testimony that the indebtedness
Fargo Company which was incurred after January 9, 1896,
the time of the entry of judgment upon the judgment notes re
to was incurred in ignorance of the giving of the judgment
and the change of directors and of the change of officers and
arrangement existing between the Rubber Companies and the
Company, and that the amount of the claims that were thu
tracted and is still unpaid exceeded $110,000.

I find while Johnson and Sadler, representing the Rubber
panies, were here from January 2nd to January 6, 1896,
was then agreed that separate books showing sales of cots
goods should be kept and the proceeds of the sales thereof
be kept in a separate bank account, which was done. I find
the advance of $50,000 on January 6, 1896, and the giving o
judgment notes and security referred to, was the result of an
dent feeling upon the part of all the parties to the transactio
was in the belief and expectation on their part that through
assistance which was in this way afforded the Fargo Com
it would be enabled to continue its business successfully
188 become ultimately relieved of its financial embarrass
and that said arrangement was entered into in good faith
without any fraudulent intent.

I find that the testimony does not show that the parties we
fluenced in making the arrangement aforesaid, upon a belief of
insolvency of the Fargo Company at that time, and the conduct
the corporation afterwards and until about the time of the ente
up of the judgment notes, in my judgment, clearly indicates
hope and expectation that the Fargo Company would be finally
lieved of its troubles.

In support of this conclusion I find that in the meantime, and
tween January 6th, 1896, and August, 1896, in the regular co
of its business the Fargo Company reduced to a large extent the
debtedness which existed on January 1st, 1896, increasing the
pacity of their manufacturing business, reducing its stock and
charging to a large extent its general liabilities, except with
United States Rubber Companies and the Metropolitan Bank, w
an evident purpose, and expectation of continuing its business; d

g which time nothing is shown to have occurred with these parties consistent with this theory. Master's report of April 17, 1899.

I find that during this period the general creditors were substantially the same as before, with the exception of the Eagle Tanning Works of Chicago, whose claim of $2,500.24 has been established, for the goods purchased on credit between April 1st, 1896, and May 15, 1896, and Wilder & Co., and the Pfister & Vogel Leather Company, hereafter mentioned.

I find that in the creation of this indebtedness to the Eagle Tanning Company, the C. H Fargo & Company did not disclose to the Eagle Tanning Company the fact of its having given the judgment notes herein referred to, nor of the change in the directory of the company, which occurred on January 9th, 1896.

I further find that in like manner there is now due and owing by the corporation of C. H. Fargo & Company to Thomas E. Wilder and John E. Wilder, partners as Wilder & Company, for goods and merchandise purchased on credit between January 6th, 1896, and August 6th, 1896, the sum of $1,584.95; and in making said purchases said C. H. Fargo & Company did not disclose to said Wilder & Company the fact of its having given judgment notes in January, 1896, payable on demand to L. Candee & Company and to the United States Rubber Company, nor of the fact of the reorganization of said Company, and the election of the new directors as before referred to.

I further find that from the evidence that between January 7th and June 26th, 1896, C. H. Fargo & Company purchased from intervening petitioner, Pfister & Vogel Leather Company, upon credit, merchandise to the total value of $20,504.32; that upon these purchases payments were made amounting to $2,946.42, leaving a balance of $17,557.90, no part of which has been paid; that on or about July 22, 1896, said Fargo & Company gave to said Pfister and Vogel Leather Company its demand note for $15,000 of the above balance, and that said Pfister & Vogel Leather Company brought suit upon said note against said C. H. Fargo & Company in the Circuit Court of Cook County, and on December 18th, 1896, recovered judgment thereon for $15,360, being a part of the total indebtedness due said Pfister & Vogel Leather Company from C. H. Fargo & Company; that execution on said judgment was duly issued on March 4th, 1897, to the Sheriff of Cook County Illinois, and was on June 2, 1897, by said Sheriff duly returned, no property found and no part satisfied; that

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execution was duly issued on said judgment of April 3, 18
the sheriff of Lee County, Illinois, and was by said sheriff on
12, 1897, returned, no property found and no part satisfied.

I further find that said Pfister & Vogel Leather Compan
its goods to C. H. Fargo Company upon credit, in ignorance
facts in reference to the giving of judgment notes to the two P
Companies and of the agreement which had been made
190 them on January 6th, 1897, for the preferring of their c
and of the change which had been made in the board of d
ors of the C. H. Fargo & Co., and that the claim of said P
& Vogel Leather Company is established in the amount of
557.90.

And I also find that during this time upon the letter
of the C. H. Fargo Company the printed names of the Fa
Treasurer and Secretary, appeared as before, without anythin
show any change in the construction or management of said
poration, nor were such changes in any way mentioned, or thei
condition disclosed.

I find that the complainant, the American Oak Leather Comp
was at the time of the filing of the bill of complaint herein
still is a corporation organized and existing under and by virtu
the laws of the State of Ohio, and having its principal place of
ness and residence in the City of Cincinnati, in the State of O
and is a citizen of the State of Ohio.

That the said complainant on the 10th day of September, A
1896, the same being one of the regular days of the Septem
term, A. D. 1896, of the Superior Court of Cook County,
covered a judgment at law in said Superior Court against the
fendant Fargo Company for the sum of $12,829.56 and cost
suit, for which amount with interest, said judgment was so
dered and entered of record in said Superior Court, Cook Cou
which was then and there and now is a court of general jurisdict
of the State of Illinois.

That on said 10th day of September, A. D. 1896, an execut
was duly issued upon said judgment against the property of said
fendant Fargo Company and duly delivered on the 10th day
September, A. D. 1896, to James Pease, Esq., who was th
and there the sheriff of said Cook County, to execute.

That the said execution was thereafter and prior to the filin
of the bill of complaint herein duly returned by said James Pea

as sheriff of Cook County, wholly unsatisfied; said sheriff certi- Master's report of April 17, 1899.
fying on said execution that he could find no property of said defendant Fargo Company whereon to levy to make good the same or any part of said execution; but that said execution was not filed in the office of the Clerk of said Superior Court until after the filing of the bill in that cause.

That the said judgment was recovered by said complainant against said Fargo Company still remains in full force and effect wholly unpaid, unsatisfied, and that there is still justly due and owing thereon from said Fargo Company to said complainant the sum of $12,829.56, with interest thereon from September, 1896, at the rate of five per cent. per annum, and costs of said suit in said Superior Court of Cook County.

That the indebtedness for which said judgment was recovered was as follows, namely, that from and after the 1st of March, 1896, said complainants sold and delivered said Fargo Company on credit goods, wares and merchandise of the value of $13,288.41, of which there still remains justly due and owing from said Fargo Company to said complainant on September 10, 1896, $12,829.56, exclusive of interest.

That said Fargo Company paid said complainant nothing whatever on account of purchases made after March 1st, 1896, except that the difference between the amount of said sales as above set forth and the amount remaining unpaid on September, 1896, was not reduced by cash payments, but by the entry of some credit of the nature of rebate or in some like manner.

That although the execution of the complainant, the American Rubber Leather Company, upon its judgment against the Fargo Company as described in the bill herein was not filed in the office of the Clerk of the Superior Court of Cook County until September 12, 1896, the day after the bill of this cause was filed, yet it had been long before returned by the sheriff "No property found, no part satisfied" prior to that time.

That in fact there was no property of any kind belonging to the Fargo Company either in Cook County or elsewhere which could have been levied upon by the sheriff under said execution, that all of the tangible property of the corporation was then in the possession of the United States Marshal, and all the outstanding accounts, notes, claims and demands due or owing it had been transferred to the Rubber Companies.

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That in addition to this a receiver of all the property
Fargo Company had been appointed by the state court prior
filing of the bill in this cause, so that the sheriff could not
enforced the execution against any of the property of
Fargo Company without being in contempt either of this
or of the state court which had appointed said receiver.

I therefore find that the complainant had fully exhausted its
edy at law before filing the bill herein.

I further find that the jurisdiction of the court as to the de
ant herein is fully established.

I find that in the making of purchases during the time
referred to by the Fargo Company from the American Oak Le
Company that the said Fargo & Co., did not disclose to said A
can Oak Leather Company the fact of its having given judg
notes in January, 1896, payable on demand to L. Candee &
pany and to the United States Rubber Company, nor the fa
the reorganization of said Company and the election of the
directors as before referred to.

I further find that during many years prior to January 6th, 1
the C. H. Fargo Company had been doing business with the M
politan National Bank of this city, its banker, resulting in the
tion from time to time of a laage indebtedness to said bank a
was finally reduced, in the usual course of business, so that on
5th day of August, 1896, said indebtedness amounted to the su
$40,000;

That the Metropolitan National Bank during the summer of 1
applied to C. H. Fargo & Co. to reduce its indebtedness to
193 and to finally discharge it by the month of November follo
ing.

I further find that at the same time said bank gave the C.
Fargo Company said notice, and down to about the 3rd or 4th
of August, A. D. 1896, it had no knowledge of any transacti
which occurred between it and the Rubber Companies in the p
vious month of January; and that it did not know of the change
the board of directors of said C. H. Fargo & Co., or that it h
given the Rubber Companies judgment notes for an indebtedne
owing by it to said Rubber Companies, or of the agreement whi
had been entered into in respect to the same between it and t

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ber Companies, or of the action which had been taken by the n constituted board in pursuance of this agreement.

further find that on or about Monday, the 3rd day of August, 1896, Charles E. Fargo, president of the said C. H. Fargo , called at the Metropolitan National Bank, and while there ed to the bank for an additional loan of $10,000.

find that during this interview, or shortly thereafter, the said es E. Fargo informed the president of said bank that the said H. Fargo & Co. had given the Rubber Companies judgment s for the amount of its indebtedness to them, and that while C. E. Fargo insisted that the assets of his company were at time largely in excess of its indebtedness and ample to meet entire amount thereof, that, owing to the difficulty in making ollections as rapidly as its outstanding paper matured, his com- would be obliged to fail, unless it received some assistance.

find that at the time of said interviews the said C. H. Fargo resented to the president of said bank that the said C. H. Fargo was indebted to him and his brothers for money exceeding 00, which they had borrowed upon their notes for the benefit e company and which they had paid over to the company for n its business, and that said Fargo brothers had put up some stock that they owned as collateral to said notes; and C. E. go thereupon proposed to said bank that if it would loan said C. H. Fargo & Co. $10,000 in addition to its then existing oan, so that said company could reimburse him and his rothers and enable them to take up said notes, he would pro- from the said C. H. Fargo & Co. judgment notes for said both for said sum so advanced as aforesaid and also for then remaining due said bank to the amount of $40,000.

further find that said bank acceded to said proposition and said C. H. Fargo & Co. said additional sum of $10,000, re- ing two judgment notes of the Fargo Company for the sum of 00 each, crediting to the account of said C. H. Fargo & Co. said bank said sum of $10,000.

further find that at the time of the completion of this agreement with said bank, neither the bank nor its officers attorneys had any knowledge of the change of the board of tors of the said C. H. Fargo & Co., or of its by-laws, but the did know that the Rubber Companies, as a part of the final agreements made, were entitled equally with themselves to enter ment upon the judgment notes which had been given.

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I further find that neither the complainants herein nor any other creditors of the said C. H. Fargo & Co. were led to credit to said company by reason of the transactions had between and the bank, nor did any of said parties sell any goods to said H. Fargo & Co. subsequent to the time when said bank made $10,000 loan aforesaid to C. H. Fargo & Co., nor did the said in any way participate in or have any knowledge of the change the by-laws of said C. H. Fargo & Co., as aforesaid.

I further find that from about the time when the said judg notes were given to said bank, as aforesaid, the said bank ent into a stipulation with the Rubber Companies by which it agreed that they should unite their efforts to collect their respe claims against the said C. H. Fargo & Co., and should share rata in whatever proceeds should be derived therefrom.

I further find that on the same day the judgments were ent in court in favor of the Rubber Companies, the said bank 195 tered up judgment upon one of its $25,000 judgment not the Superior Court of Cook County, Illinois, and sued out execution thereon, and levied the same upon the tangible prope of the said C. H. Fargo & Co. in Cook and Lee Counties, Illi subject, however, to the prior levy thereon under the judgm entered in favor of the Rubber companies, and that it surrende its other $25,000 judgment note to said C. H. Fargo & Co. in change for a conveyance of certain of its property at Dixon, I nois, described in the two deeds offered in evidence in this case.

It is insisted that the conveyance of said property to said has become inoperative and defeated by reason of the decree tered in this court on the 18th day or January, 1897, restra said bank from selling, leasing, or otherwise disposing of property since the date of the entry of said decree, but I make finding as to the legal effect of said order.

The surrender of the $25,000 note which was the consideration for the conveyance of said property, and the orders entered in court in respect to the property, are referred to by me as circumstances occurring in connection with and following the transaction and not for the purpose of making any finding as to the legal effect of either: under the order of reference I do not feel that I am justified in doing this.

I further find upon the testimony submitted to and taken before me in connection with this branch of the case, that

dant, the Metropolitan National Bank, is not shown to have Master's report of April 17, 1899.
guilty of any actual fraud as against the complainants or the
creditors of C. H. Fargo & Co., by reason of any of its
actions with the said defendants, C. H. Fargo & Co. or the
Rubber Companies.

further find that August 6, 1895, before entry of the judg-
ments in favor of the Rubber Companies as set forth in the
pleadings, C. H. Fargo & Co., by its president C. E. Fargo,
duly assigned to the United States Rubber Company all the ac-
ts and bills receivable of the Fargo Company as further se-
ty for the indebtedness to the Rubber Companies, pursuant to
accordance with the agreement made in January, 1896.

find nothing in the testimony which has been taken before me
this reference which so changes the record which was before
Court upon the hearing of the application for the appointment
receiver as to lead me to a conclusion different from that an-
ed by the Court at that time; indeed the effect of the testi-
, in my judgment, is to explain and strengthen the conclu-
then expressed by the Court, that there was no fraud in
want of good faith shown in the conduct of any of the de-
nts in respect to the transactions complained of; and upon a
l examination of the whole record and testimony, I so find
eport.

return herewith all of the testimony taken before me upon
earing.

of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the
United States, Northern District of Illinois.

ed, Chicago, April 17, A. D. 1899.

Testimony of Charles E. Fargo

States Rubber Company and L. Candee & Company, filed in this cause on October 6, 1896, and that therefore said records need not be here copied. It is also stipulated that said exhibits to said answer may be read and considered by the master and by the court as such records as if fully copied herein.

Q. Mr. Fargo, please examine the record book and the records appearing thereon, on pages 25 to 39, both inclusive, and state if you know, who prepared the records as they appear in said book; that is, who drafted the records as they now appear pasted in said book?

A. I do not remember.

Q. Were they prepared in the office of C. H. Fargo & Co.?

A. I think not.

Q. Were they prepared in the office of your counsel, Cratty Bros.?

A. I do not remember, sir.

Q. Have you no recollection on the subject?

A. Well, I might be wrong in stating; I do not think they were prepared in either place, but I do not remember, sir; I could not state that positively.

Q. Isn't it a fact that they were prepared outside of the office of C. H. Fargo & Co. and sent to you and by you or by your brother, Frank M. Fargo, pasted in that record book?

Mr. Beale: I will prove that for you, they were prepared in our office, I think, when you get around to it, when you want to examine me, or else they were prepared in Cratty's office and submitted to us.

A. That is the reason I do not know. These corrections are in my handwriting (indicating); there are other interlineations—

Q. In your handwriting?

A. Yes, sir.

Q. Look at the signatures appended to the various records from page 25 to 39, both inclusive, and state whether the signatures appended to the various records are the genuine signatures of the parties whose signatures they purport to be?

A. I think they are, yes, sir. Some of them I do not know.

Q. Read those names or signatures with which you are not familiar.

A. Tiffany Blake, Frederick B. Fuller, Gilbert E. Porter, George C. Madison and Buell McKeever, also.

Q. Are you familiar with all of the other signatures?

A. I am.

Q. On and after January 6, 1896, there was a change, as shown by the record book, in the organization of the board of

and in some of the officers: will you please state who that time from the board of directors?
A. Fargo, W. F. Hayes, C. D. Steele, and I think Mr. so—I think he was in the city at the time, and also Mr.

at individuals were elected to fill the vacancies created signations of the members whom you have just named?
ell McKeever, Tiffany Blake and Frederick B. Fuller
. Porter and George C. Madison.
s there any change in the official force of the company ame time? If so, what was that change?
ell McKeever was made secretary in place of E. A. signed.
s there not a change in the office of the treasurer at e time?
s; Buell McKeever was also elected treasurer.
o was the treasurer at the time Buell McKeever was easurer of the company?
ank M. Fargo.
ur brother?
brother.
you know, or did you at that time have any personal ance with George C. Madison, Tiffany Blake, Gilbert E. uell McKeever and Frederick B. Fuller, or any or either

th only one.
ich one?
. Porter.
at was the nature of your acquaintanceship with Mr. nd how did it originate?
as introduced to Mr. Porter by Mr. Beale. I do not the purpose of your question.
out what time did that introduction take place—in 1896?
January, 1896.
the time these transactions occurred?
e early part of January, 1896.
you know where Madison, Blake, Porter, McKeever and ere employed in January, 1896, or what was their occu- n life at that time?
know where they were employed.
here?
the office of Messrs. Isham, Lincoln & Beale—no, one was not.

Testimony of Charles E. Fargo.

Testimony of Charles E. Fargo.

Q. Which one was not employed in that office?

A. Mr. Blake.

Q. Where was he employed?

A. In the corporation counsel's office.

Q. In the office of the corporation counsel for the City Chicago?

A. Yes, sir.

Q. Who was corporation counsel at that time?

A. Mr. Beale.

Q. A member of the firm of Isham, Lincoln & Beale?

A. Yes, sir.

Q. In other words, Mr. Blake was under Mr. Beale in t corporation counsel's office?

A. As I understand it, he was.

Q. Who selected Madison, Blake, Porter, McKeever and Fu ler as directors of the Fargo Company?

A. I think Mr. Beale selected them.

Q. By whose direction were they elected directors of t Fargo Company in January, 1896?

A. I do not exactly understand what that means, "By wh direction." I should say by Mr. Beale's direction.

Q. Were these men whom I have just named ent strangers to you and to your brothers, and to the other part connected with the Fargo Company, at the time they we selected and elected directors of the Fargo Company?

A. Yes, sir.

Q. Did you not state to Mr. Beale that if any persons we selected for the office of director who were prominent in busine life in Chicago, that the public might then become advised the fact that the board of directors was controlled by Mr. Beale clients, and that would ruin the credit of the Fargo Compan and therefore in the selection of directors, persons should b selected who were close to and confidential with Mr. Beale his firm?

A. I do not think I can answer that in that form exactly.

Q. Exactly do, according to the truth and the fact.

A. Because I do not remember to have made such a remar as you state. There was something of like nature said, that did not want publicity or we did not want publicity to the chang of directors.

Q. What reason did you give Mr. Beale for that wish on you part or the part of the company?

A. I do not know that I gave any reason; I should say, how

Testimony of Charles E. Fargo.

that because it would injure the credit of C. H. Fargo & Co.
Porter: Do you mean you gave that as a reason?
e Witness: I do not know what reason I gave. I do not
that I gave any reason.
Was not that the fact?
It unquestionably was the fact.
In the management of the business, and especially in
is commonly called the financial part of your company,
to this change in the board of directors and officers in Janu-
1896, was Mr. Charles D. Steele an active member of your
ern at that time?
In its management?
Yes, sir.
No, sir.
What were his special duties?
Simply cashier.
What did he do with reference to the credits given by your
e?
He did not do anything.
Who had charge of that department?
Mr. Hayes and myself.
Was Mr. Hayes familiar with the financial condition of
. Fargo & Co. at the close of 1895, and in January, 1896?
. Yes, sir.
During what period of time was William F. Hayes con-
ed with C. H. Fargo & Co.?
. All of its corporate existence.
. Up to the time of its failure in August, 1896?
. Yes, sir.
. Where is he now?
. He is in Chicago.
. What is his particular address?
. I cannot give it to you. I can find him.
. Mr. Fargo, I call your attention to a judgment note at-
hed to the files in the case of the Metropolitan National Bank
hicago vs. C. H. Fargo & Co., in the Circuit Court of Cook
nty, Illinois, general number 160,223, common law, and ask
to state who signed that note.
. I signed it.
. Where?
. If I remember rightly in the office of Isham, Lincoln &
ale.
. In whose handwriting is the body of the note?

Testimony of Charles E. Fargo.

A. I do not know.

Q. You do not recognize it?

A. No, sir.

Q. Who gave you the note to sign?

A. I think it was Mr. Follansbee, but I am not positive that.

Introduction of Compl't's. Exhibit 1.

Mr. Newman: We offer the note, together with the files in that case, in evidence, and the record of the judgment entered upon the said note on the sixth day of August, 1896, in the Circuit Court of Cook County, Illinois, for the sum of twenty-five thousand two hundred and fifty dollars ($25,250), said note being dated Chicago, Illinois, August 5th, 1896, payable on demand, to the order of the Metropolitan National Bank of Chicago, for the sum of twenty-five thousand dollars ($25,000), and annexed to said note is warrant of attorney to confess judgment thereon.

The Master: Said note, files and record are marked Complainant's Exhibit No. 1. (See page 204.)

Q. I now direct your attention, Mr. Fargo, to a judgment note dated Chicago, January 6, 1896, for the sum of $140,000, payable to the order of the United States Rubber Company, purporting to be signed by C. H. Fargo & Co., by Charles E. Fargo, president, with power of attorney to confess judgment thereon, annexed to said note, and ask you who signed the note and warrant of attorney?

A. I signed them.

Q. Where?

A. I do not remember.

Q. Was that note and warrant of attorney signed on the date it bears date?

A. I think it was. I do not know.

Q. What did you do with this note after you signed it?

A. Gave it to Mr. Beale, if I remember rightly, or some one representing him.

Introduction of Compl't's. Exhibit 2.

Mr. Newman: I offer in evidence this note and warrant of attorney, together with the files and records in the case of United States Rubber Company vs. C. H. Fargo & Co. in the Circuit Court of the United States for the Northern District of Illinios, general number 24,216, upon which judgment or judgment was confessed in said court on August 6, 1896, for the sum of one hundred and forty-five thousand four hundred dollars ($145,400).

The Master: Said note, files and records are marked "Complainant's Exhibit No. 2." (See page 205.)

Testimony of Charles E. Fargo.

Q. I direct your attention to the judgment note bearing date icago, January 6, 1896, for the sum of fifty-one thousand five ndred dollars ($51,500), payable to the order of L. Candee & Co., h a warrant of attorney attached to the note, and ask you o signed the note?

A. I did.

Q. On behalf of the Fargo Company?

A. Yes, sir.

Q. At whose request did you sign this note?

A. Messrs. Isham, Lincoln & Beale.

Q. To whom did you give the note after you signed it?

A. Returned it to them.

Q. The note is signed, how?

A. "C. H. Fargo & Co., by Chas. E. Fargo, prest."

Introduction of Compl't's. Exhibit 3.

Mr. Newman: I offer in evidence this note and warrant of torney annexed thereto, together with all the files and records, d record of the judgment in the case of L. Candee & Co., a poration, etc., v. C. H. Fargo & Co., general number 24,215, the Circuit Court of the United States for the Northern District Illinois, upon which judgment note judgment was entered in id Circuit Court of the United States on August 6, A. D. 1896, r the sum of thirty eight thousand three hundred dollars $38,300).

The Master: Said note, files and records are marked "Complainant's Exhibit No. 3." (See p. 209.)

Q. Mr. Fargo, where was the property, the tangible property, the Fargo Company located on August 6, 1896, and thereafter?

A. At 196 to 200 Market street, corner of Market and Quincy reets.

Q. Chicago, Illinois?

A. Yes, sir; Chicago, Illinois.

Q. Anywhere else?

A. Nowhere else.

Q. Did not the Fargo Company have a factory located at ixon, Illinois?

A. Yes, sir.

Q. Did the Fargo Company have any tangible property of any ind or nature located anywhere in the universe excepting that cated at the corner of Quincy and Market streets, Chicago, linois, and that which was located at Dixon, Illinois, in its ctory?

A. Yes, sir.

Q. Where?

Testimony of Charles E. Fargo

A. They had some real estate, some small portions of [illegible] estate, taken in different parts of the United States.

Q. Any in the State of Illinois?

A. I think not, except at Dixon.

Q. The other real estate was located in the State of Colorado and the State of Texas?

A. Some in Missouri, some in Kansas and Nebraska, I believe; I do not remember exactly where they were, but some [illegible] taken ordinarily to secure accounts and so forth.

Q. Taken to secure moneys that were owing to the Fargo Company by its customers?

A. Yes, sir.

Q. Have I named all the tangible property which belonged to the Fargo Company, or in which the Fargo Company was interested in August, 1896, located anywhere in the State of Illinois?

A. I think you have, sir.

Q. On August 6, 1896, did the United States marshal seize and take into his possession, custody and control all the tangible property which the Fargo Company had anywhere and everywhere in the State of Illinois?

A. I think he did.

Q. Was there any tangible property of any kind whatever located anywhere in the State of Illinois which did not pass into the possession and control of the United States marshal in the month of August, 1896?

A. Not that I know of.

Q. If any existed, you would know it?

A. Probably.

Q. Have you any doubt on the subject?

A. No, sir; I have no doubt of it.

Q. You were the chief executive officer of the Fargo Company at that time?

A. Yes, sir.

Q. And had full knowledge of its condition and the location of its property?

A. Yes, sir. I do not know what the process of law was, but it went out of our hands—the real estate at Dixon.

Q. You mean the hands of the corporation and its officers?

A. Yes, sir.

Q. Now, in addition to the personal, tangible property located in the factory at Dixon, Illinois, there was a building and the ground upon which the building stood at Dixon, Illinois?

A. Yes, sir.

hat became of the factory building and ground upon which Testimony of Charles E. Fargo.
at Dixon, Illinois, in August, 1896?
I remember rightly it was deeded to the Metropolitan
Bank.
hand you two deeds, each dated August 6, 1896, and ask
whom the deeds are signed?
y myself and my brother for C. H. Fargo & Co.
hat is, the two deeds and each of them is signed by the
ion, by Charles E. Fargo, then president, and by F. M.
ice president; is that right?
es, sir.
re these the genuine signatures?
es, sir.
ere they made on the day they purport to be made,
August 6, 1896?
think they were.
here were these two deeds signed?
the office of Messrs. Isham, Lincoln & Beale.
ho prepared the deeds, and in whose handwriting is the
each of these deeds?
do not know.
ewman: We offer these two deeds and the acknowledg- Introduction of Complt's. Exhibits 4 and 5.
ttached thereto, together with the endorsement thereon
ecorder or clerk of Lee County, in the State of Illinois, in
e.
Master: Said deeds are marked Complainant's Ex-
os. 4 and 5, respectively. (See p. 210.)
hen were the two deeds which you have just identified
ich have been offered in evidence, and which run to the
olitan National Bank, delivered by you, or by you on
f the corporation, to the Metropolitan National Bank,
in mind that they bear date August 6, 1896?
think they were delivered on that same day.
he property described in the two deeds is what particular
?
factory building and ground in Dixon, Illinois.
o other?
o other.
call your attention, Mr. Fargo, to the real estate de-
in these two deeds running from the Fargo Company to
tropolitan National Bank, each dated August 6, 1896, and
ll your attention to the tangible property seized by the
States marshal on August 6, 1896, and ask you whether

201 MEMORANDUM.

Memorandum. The matter of filing objections to this report before the Master was discussed by all the counsel in the case, and after a full discussion it was agreed between counsel that objections to the Master's report need not be filed before the Master, but in lieu thereof exceptions should be filed in court to the report, and that the same, as filed in court, should stand both as objections and
197 exceptions to the report, if objections before the Master are necessary; and that the case shall be heard upon such exceptions upon the merits of the case.

HENRY W. BISHOP,
Master in Chancery Cir. Ct. U. S. N. Dist. La.

Dated April 17, 1899.

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IN THE

rcuit Court of the United States.

NORTHERN DISTRICT OF ILLINOIS.

IERICAN OAK LEATHER COMPANY

vs.

C. H. FARGO & CO. et al.

IN EQUITY.

NO. 24,238.

EVIDENCE

before Henry W. Bishop, Master in Chancery of said Court, at his Office in the Monadnock Building, in Chicago, Illinois, on March 19th, 1898, and at Subsequent Days by Adjournment.

COMPLAINANT'S EVIDENCE.

RLES E. FARGO, a witness called on behalf of complain- , being first duly sworn, was examined in chief by Mr. rman and testified as follows: Testimony of Charles E. Fargo.

What is your name?
Charles E. Fargo.
Your age?
Forty-eight.
Where do you reside?
In Chicago.
How long have you lived in Chicago?
Forty-two years.

Testimony of Charles E. Fargo.

Q. What business were you engaged in, in the years 1895 and 1896?

A. Boots and shoes.

Q. Were you so engaged in connection with the corporation known as C. H. Fargo & Co.?

A. Yes, sir.

Q. Where was their place of business in Chicago?

A. On the corner of Market and Quincy streets.

Q. During what years?

A. Was their place of business at that place?

Q. Yes.

A. 1893, 1894, 1895 and 1896.

Q. What was your connection with the corporation during those years?

A. President.

Q. For what period were you president?

A. From 1892 to 1896.

Q. What time in 1896?

A. Up to what time in 1896?

Q. Yes.

A. Well, if there was a corporation now, I would be president still, that is to say, I do not know what time it expires. You can tell that better than I can.

Q. Well, the corporation failed in August, 1896?

A. Yes, sir.

Q. And at the time of its failure you were president?

A. Yes, sir.

Q. And have been president since 1892?

A. Yes, sir.

Q. You have, in fact, never ceased to be president, have you?

A. Not by any action of my own.

Q. Well, by the action of anybody else?

A. No.

Q. When did the corporation absolutely cease doing business?

A. On August 6, 1896.

Q. Has it ever resumed its business since that time?

A. No, sir.

Q. I hand you a book purporting to be the records of the organization of the corporation known as C. H. Fargo & Co., one of the defendants in this cause, and the records of the meetings of its board of directors and of its stockholders, and ask you whether you recognize the book?

Testimony of Charles E. Fargo.

A. Yes, sir; I do.
Q. Is that the record book of C. H. Fargo & Co.?
A. It is.
Q. Who were the officers of the corporation in 1895?
A. Do you want the names of the officers?
Q. Yes, sir; give their full names.
A. Myself as president, Frank M. Fargo as vice president and treasurer, I think, and Edward A. Fargo, secretary.
Q. Who were the directors at the same time?
A. These three I have named were among the directors, and Thomas F. Byrnes, and I don't know, I think you have the names there.
Q. Was Charles D. Steele a director?
A. I think he was.
Q. Was William F. Hayes a director?
A. I think he was.
Q. And the three foregoing whom you have named were also directors?
A. Yes, sir; yes; there are the directors on there. (Indicating in record book.)
Q. You have now examined the record book to refresh your recollection; now, please state who were the directors during the year 1893?
A. Charles E. Fargo, Frank M. Fargo, E. A. Fargo, William F. Hayes and C. D. Steele. Allow me to correct that and say they were, I think—Mr. Byrnes, who was not present much of the time—
Q. What is his full name?
A. Thomas F. Byrnes. I think there were seven directors—I think the by-laws called for seven.

Counsel for complainant here offered in evidence section 3 of article 4 of the original by-laws of C. H. Fargo & Co., as shown upon page 9 of the record book of the company, which section reads as follows:

"Section 3. The president and treasurer or either of them, or, in their absence, anyone of the other officers, shall be empowered to borrow money, sign and endorse notes, contracts, drafts and checks."

Counsel for complainant here offer in evidence the records of C. H. Fargo & Co. as shown on pages 25 to 39 of said record book:

It is stipulated by counsel for all parties that said records so introduced are correctly set forth in Exhibits "A" and "B" to the joint and several answer of defendants United

Stipulation re corporate records of C. H Fargo & Co.

Testimony of Charles E. Fargo.

Q. Oh!

A. And got no reply, and it had to go to protest.

Q. How much was that note?

A. About $5,000.

Q. Did you also communicate with the rubber companies o that subject?

A. Yes, sir.

Q. What did you tell them?

A. Told them the circumstances just as they were, as I hav stated them.

Q. This occurred on August 5th—

A. On August 5th.

Q. —1896?

A. 1896.

Q. Did you call upon any representative of the rubber com panies or see any representative of the rubber companies aft August 2, 1896, and prior to August 5, 1896?

A. I do not remember that I did, except possibly told the the result of my interview in New York.

Q. Who did you see?

A. I saw Mr. Beale.

Q. What occurred on August 5, 1896?

A. I do not remember.

Q. A good deal must have happened on that day.

A. I do not know what you mean exactly.

Q. With respect to your business, the company's affair Did you see the bank on that day?

A. I think it was that day.

Q. Whom did you see at the bank?

A. I saw Mr. Keith.

Q. Prior to seeing Mr. Keith on August 5th, 1896, did you hav any interview with or any instructions from the two rubber com panies relative to your visiting Mr. Keith, the president of th Metropolitan National Bank?

A. I did have interviews with them.

Q. With whom?

A. I think with Mr. Beale.

Q. In Chicago?

A. In Chicago—yes.

Q. What was that interview?

A. It was in regard principally to their being included in th judgment, with the same judgment notes, to secure a great amount.

Mr. Beale: You mean that the bank be included?

The Witness: Yes; that the two rubber companies could take care of the bank, is that what you mean in substance?

A. That they should be taken care of in the same way.

Q. Did you talk with Mr. Beale about the factory or what disposition should be made of the factory on August 5th?

A. I do not think I did—I may have done so—I do not remember that I did.

Q. Had you made up your mind on August 5, 1896, that the company would have to close its doors?

A. Yes, sir.

Q. No hope for it, was there?

A. A note had gone to protest that day.

Q. Well, did Mr. Beale, on behalf of the two rubber companies, agree that the doors of the company would have to be closed and its affairs wound up?

A. That day or the next they did.

Q. Keeping in mind that the judgments in favor of the two rubber companies were confessed in the United States Circuit Court on August 6, 1896, does that fact refresh your memory as to what occurred on August 5th?

A. Well, I cannot, accurately, between August 5th and 6th.

Q. You called on Mr. Keith, the president of the Metropolitan National Bank, on August 6, 1896; now, what occurred between you and him?

A. I told Mr. Keith the circumstance of the judgment notes—

Q. What judgment notes?

A. That the rubber companies held.

Q. Yes.

A. I told him that we wanted $10,000, and that we would give him the same character of judgment notes that the rubber companies held.

Q. Did you tell him what you wanted the $10,000 for?

A. I think I did.

Q. What did you say to him?

A. I said we wanted $10,000 for our own use, to live on—the concern owed it to us.

Q. Whom did you include by the pronoun "our own use"?

A. My brothers and myself.

Q. In other words, that you wanted the bank to give you—give you three men, yourself and your two brothers, $10,000 so that you would have something to live on?

Testimony of Charles E. Fargo.

A. I do not think I put it in that way.

Q. Well, how did you put it—put it to Mr. Keith, I mean?

A. I put it to Mr. Keith that I wanted their indebtedness be $50,000 instead of $40,000, and told him why.

Q. What did you tell him when you told him why?

A. That I wanted C. H. Fargo & Co. to pay a portion at le of what C. H. Fargo & Co. owed my brothers and myself.

Mr. Beale: What day was this?

The Witness: I do not know; cannot tell you—the 5th or 6

Q. What did Mr. Keith say?

A. I cannot tell you whether he answered me right off or but eventually he gave it to me.

Q. What did he say about it in answer to your suggesti

A. He said he would consult his attorneys, if I remem rightly.

Q. Well, when he finally concluded to give you and your brothers the $10,000, what did he say to you?

A. I do not remember what he said to me accurately more than I know he gave us the $10,000. I did not have m further—

Q. What in substance did he say to you?

A. He said we could have it.

Mr. Beale: So that is when you made up your mind would have to go to the wall?

The Witness: On the 5th or 6th of August.

Mr. Beale: Till within two or three days, or up to the 5t 6th of August, you expected to pull through, and so there wa change of mind in that?

The Witness: Yes, sir.

Mr. Beale: That is what I want to get at.

Q. When you got this $10,000 from Mr. Keith or the Metropol National Bank you had made up your mind you would hav go to the wall?

A. Yes, sir.

Q. And Mr. Keith knew it?

A. Yes, sir.

Q. And you told him so?

A. Unquestionably I told him so.

Q. Now, Mr. Fargo, who was it that first suggested th deed or two deeds should be made by the Fargo Company veying the factory and land at Dixon, Illinois, to the Metropol National Bank?

Testimony of Charles E. Fargo.

A. That was suggested in the office of Messrs. Isham, Lin-
oln & Beale, but by whom I do not remember.
Q. Who was present in the office at that time?
A. Mr. Follansbee—
Q. On behalf of the bank?
A. On behalf of the bank.
Q. And Mr. Beale?
A. And Mr. Beale. There may have been others in the office.
Q. And yourself?
A. And myself.
Q. That occurred on August 5, 1896?
A. On August 6th, I think.
Q. On August 6th?
A. I think it was on August 6th.
Q. After you had gotten the $10,000?
A. I do not remember whether it was before or after, but
bout that time.
Q. Did you get the $10,000 on the day your place of business
as closed or on the day before?
A. I think the day before—no; it was on the day the place of
usiness was closed; I am not very sure; I cannot tell you that
ositively.
Q. It was either the 5th or 6th?
A. It was either the 5th or 6th.
Mr. Beale: I take it where there is anything clearly wrong in
ere, you would rather I make a suggestion than lengthen the
ecord by a long cross-examination.
Mr. Newman: Yes.
Mr. Beale: The point about it is this: Mr. Fargo is clearly
rong in saying I was present, and he will recollect it, too, I
ink. I was at the Gaylord Club, fishing, and hadn't anything
do with the entry of this judgment at the time. Before I went
ay the fact about it was, you came to me and I suggested you
to New York and see Sadler or Johnson, because I had no
uthority to make any arrangement with the Metropolitan Bank
oming in as a party in any way, and you went down to New
ork, and I do not remember whether I was here when you came
ack or not.
The Witness: I do.
Mr. Beale: You told me it was all fixed and I supposed it
as all right, and I went up fishing in the woods.
The Witness: That is so.
Q. When you referred to the interview at Mr. Beale's office

Testimony of Charles E. Fargo.

and stated Mr. Beale was present, were you in error as
Beale's presence?

A. That last interview?

Q. Yes, sir.

A. Yes, sir.

Q. Now, who was present on behalf of the two rubb
panies in Mr. Beale's office at the time that intervie
place? Was it not Mr. Porter?

A. I presume it was Mr. Porter.

Q. And probably young Mr. Isham?

A. I think young Mr. Isham.

Q. Of that firm?

A. Yes, sir.

Q. Can you now recollect who it was who suggested t
deeds be made conveying the factory property to the Metr
National Bank?

A. It was some one in that office—that was a matter
ment between them, I suppose.

Mr. Beale: You do not mean some one in our firm, b
one present at that time?

The Witness: No; some one present at that time.

Q. Were you present when the written agreement wa
by which the rights of the two rubber companies and t
were defined with respect to the securities and preferenc

A. I do not know anything about that agreement, s
they made among themselves.

Q. The record book shows on pages 36 and 37 that a
was held on August 5, 1896, as follows: "Minutes of a
meeting of the board of directors of C. H. Fargo & Co.,
room 718, 184 LaSalle street, Chicago, on August 5, 1896, at
Do you now, independent of this record, recall this meet
was held in the afternoon?

A. There was a meeting.

Q. In whose office did that meeting take place?

A. In the office of Isham, Lincoln & Beale.

Q. Who wrote the minutes of that meeting as they
pear?

A. I do not know.

Q. Who pasted the minutes in this book on pages 3
as they now appear in typewriting?

A. I do not know.

Q. Did you have anything to do with it?

A. I did not.

Testimony of Charles E. Fargo.

Q. Did you sign the minutes (exhibiting same to witness)—ese minutes?

A. I did; that is my signature.

Q. Do you remember whether you signed it on that day or ereafter?

A. I do not remember.

Q. At that meeting, Mr. George C. Madison was elected cretary of the meeting, as the record shows; the record further ows that there were present Charles E. Fargo, F. M. Fargo, ffany Blake, George C. Madison and Gilbert E. Porter. Do u remember whether these gentlemen were present or not?

A. Without the record I could not remember exactly who was esent.

Q. You were president of the Fargo Company at that time?

A. I was.

Q. The record goes on and says: "The president then stated at there were now present a majority of the board of directors, hich majority represented by ownership a majority of the capital ock of the company, and therefore, under the by-laws, conituted a quorum for the transaction of business. He said at he had called the meeting for the purpose of considering the uestion of further securing the indebtedness of this company the Metropolitan National Bank of Chicago, and that, in his dgment, it was desirable to secure the same by giving judgent notes of the company in place of the plain notes now held said bank. The president thereupon moved the adoption of e following resolution:

Resolved, that the president of this company be and he is reby authorized to execute and deliver notes of the company ntaining warrants of attorney to confess judgment, payable to e Metropolitan National Bank, for the aggregate sum of fifty ousand ($50,000) dollars in place of the plain notes of this comny now held by said bank; provided, however, that the presint of the company shall make such terms respecting the use the bank of said judgment notes as shall prevent said notes, the judgments to be issued thereon, from becoming liens upon y of the assets of this company prior or superior to, or having preference over, judgments which may hereafter be entered on the judgment notes heretofore given to the United States ubber Company and L. Candee & Company, respectively."

Do you remember that resolution?

A. I do.

Q. Was it the understanding between the bank and the two

Testimony of Charles E. Fargo.

rubber companies at the time this resolution was passed they were both to enter up judgments on August 5th or 6th close up the business of the Fargo Company?

A. In stating the facts to Mr. Keith, my agreement with —or his agreement with me—was that they were not to h preference over the rubber companies. That was the only c dition that I—

Q. Was it understood that the judgment notes which were to give to the Metropolitan National Bank were to entered up and the property of the Fargo Company seize August 5th or 6th?

A. Not with me.

Q. Did not you know that was to be done?

A. I remember now that it was done quicker than I expe it to be done.

Q. What do you mean by quicker—a question of hours?

A. A question of time; yes, sir.

Q. Did not you give these judgment notes with the exp knowledge on your part that they were given, not to be held to be used immediately?

A. Yes; that they were to be used very soon.

Q. Well, that day or the next day, is it not a fact?

A. I told Mr. Keith—I think it was Mr. Keith—the cir stances, and they concluded it would have to be at once.

Q. The next resolution which I find in the records o meeting held on August 5, 1896, pages 36 and 37, is as fol "Thereupon the president stated that he had begun some tiations with the bank for the sale of this company to it grounds and building of the company at Dixon, Illinois, i satisfaction of twenty-five thousand ($25,000) dollars of th debtedness of this company to said bank, and that in his ment it would be wise for the company to consummate said if possible. He thereupon offered and moved the adoption following resolution:

"Resolved, that the president and vice president of this pany be and they are hereby authorized to negotiate wit Metropolitan National Bank for the sale and transfer to it company's real estate and buildings at Dixon, Illinois, i satisfaction of twenty-five thousand ($25,000) dollars of th debtedness of this company to said bank, and if such ne tions are successful, to execute and deliver to said bank a ranty deed of such real estate and buildings in considerat said bank's canceling and delivering up to this company tw

e thousand ($25,000) dollars of the company's notes now held to be held by it." Which resolution was carried. Do you ollect that resolution?

A. I signed it.

Q. Yes?

A. Yes; I remember that resolution.

Q. Had the bank agreed prior to the passage of this resolution take the real estate and buildings at Dixon in satisfaction $25,000 of its claims against the Fargo Company?

A. I do not remember whether they had or not. The time—do not remember the exact time of their agreement to that, their doing that.

Q. Did you make such an agreement with the bank so to ke the real estate and buildings at Dixon and cancel $25,000 its claims against the Fargo Company?

A. I did make such an agreement.

Q. Was that agreement made before that resolution was opted?

A. I presume it was.

Q. There cannot be any doubt about it, can there, Mr. Fargo?

A. According to the wording of the resolution itself.

Q. How long before the resolution, keeping in mind the meet- was held the afternoon of August 5th, was it on the forenoon August 5, 1896?

A. Probably at the same time—immediately right then and here.

Q. Now, who suggested that the building and real estate in Dixon should be transferred to the bank in cancellation of $25,- indebtedness?

A. I do not remember.

Q. The bank knew nothing about the value of this property, id it?

A. Excepting as they asked me about it at that time.

Q. Do you know how this sum of $25,000 came to be fixed as the consideration of the conveyance of the real estate and build- ings at Dixon?

A. I do not know how it came to be fixed. I know Mr. Follansbee asked me particularly what I thought it was worth

Q. And you told him?

A. And I told him.

Q. What did you tell him?

A. I told him—I do not remember the exact figures, but I told him it cost us fully $40,000.

Testimony of Charles E Fargo

the Fargo Company owned or had any interest in any other property anywhere in the State of Illinois—any other tangible property anywhere in the State of Illinois, other than the real estate described in the two deeds and the property seized by the United States marshal as described by you?

A. No; I do not know—I do not think they had.

Q. Don't you know?

A. They may have had a small piece of property somewhere in Illinois, but if they did I don't remember—I do not think they did; that is the only tangible property I know of.

Q. Is that true as to the Fargo Company for the whole month of August, 1896?

A. Why, yes; I don't know; I don't quite exactly get at what your meaning is.

Q. My meaning is the tangible property to which I have called your attention.

A. They took everything I know of during the month of August.

Q. And for all time thereafter?

A. And for all time thereafter.

Q. Now, Mr. Fargo, did the Fargo Company own, control or have any interest in any intangible property, like book accounts, notes, choses in action and things of that kind, in the month of August, 1896?

A. Yes, sir.

Q. What became of that class of property?

A. They were assigned to the United States Rubber Company.

Q. At what time?

A. August 6, 1896.

Q. Is it true, then, that after August 6, 1896, the Fargo Company had disposed of or been deprived of all its property of every kind and nature located in the State of Illinois?

A. Yes, sir.

Q. Did it ever own or acquire any property of any kind after August 6, 1896?

A. No, sir.

Q. Have you now fully stated what became of all the property of the Fargo Company located in the State of Illinois in the month of August, 1896, and thereafter?

A. I think I have.

Q. Mr. Fargo, did the United States Rubber Company or L

dee & Company sell the Fargo Company any goods after nuary 6, 1896?

. No, sir.

. Did these two concerns, or either of them, ship any goods Fargo & Co. after January 6, 1896?

. Yes, sir.

. On what terms and conditions?

. Consignment account.

. When the goods were shipped on consignment account r January 6, 1896, what did the Fargo Company do with them far as the custody was concerned?

. Put them in stock—put them with the balance of the goods the United States Rubber Company had shipped.

. Is it not a fact that in January, 1896, an arrangement was de between the Fargo Company and the United States Rub- Company and L. Candee & Company, by which the sixth of your building at the corner of Market and Quincy streets, ago, was set apart exclusively for the consigned goods of two rubber companies?

. Yes, sir.

r. Newman: Hereafter, Mr. Fargo, I will refer to the United es Rubber Company and L. Candee & Company as the two ber companies, so that when I use the expression, "the two ber companies," you may know that I include the United es Rubber Company and L. Candee & Company.

. Did the Fargo Company use the sixth floor after January, for its own property, or was that floor used exclusively for consigned goods shipped by the two rubber companies?

. Used by the rubber companies.

. Exclusively?

. Exclusively.

. Did that condition of things continue until Fargo & Co. el in August, 1896?

. Yes.

. Prior to January, 1896, did the Fargo Company set apart floor or any portion of its premises for the safe keeping of of the goods received from the two rubber companies?

. They were always kept by themselves.

. Was any floor set apart prior to January 6, 1896?

. I think not.

. The sixth floor was especially set apart and used ex- sively for the consigned goods of the two rubber companies r January 6, 1896?

Testimony of Charles E. Fargy.

A. Yes, sir.

Q. By whose direction was that floor selected and set a for that purpose, or how did it happen?

A. I have forgotten.

Q. You have forgotten? Did you do it of your own volit or did the two rubber companies, or their representatives, quest you to do it?

A. I think we were requested to do it.

Q. By whom?

A. I presume by the United States Rubber Company o the rubber companies.

Q. Well, have you any doubt upon that subject?

A. No; I have no doubt upon that subject.

Q. Is it not a fact that in January, 1896, when the $ loan was made, the rubber companies insisted upon ha their goods set apart from all the other merchandise of the F Company as located on the sixth floor, as one of the condit imposed at that time?

A. I think they did request that it be done.

Q. What lawyer in the City of Chicago represented the F Company at that time?

A. Messrs. Cratty Brothers.

Q. What individual of that firm?

A. Mr. Thomas Cratty.

Q. Is it not a fact that the subject of setting apart the g shipped by the two rubber companies was the subject of cussion between your counsel, Mr. Thomas Cratty, and Beale on behalf of the two rubber companies?

A. There was some discussion about it.

Q. Is it not a fact that a special written agreement was pared in January, 1896, by Mr. Beale on behalf of the two r companies clearly defining the character of the shipments to the Fargo Company by the two rubber companies?

A. I do not remember such an agreement.

Q. Is it not a fact that such an agreement was made reduced to writing and signed by you on behalf of the F Company?

A. I do not remember.

Q. Will you say it was not?

A. I should; as far as I remember it was not; I do no member to have signed such an agreement, nor to have one.

Mr. Beale: Let me tell you the facts, Mr. Newman.

Testimony of Charles E. Fargo.

eral years the United States Rubber Company had an agree- r renewed each year, I think, Mr. Fargo, just as it is with ps, Dodge & Palmer, Selz, Schwab & Co., and various r parties. You must understand they manufacture possibly -thirds of the rubber boots and shoes manufactured in erica. They had these consignment contracts, and the s belonged to them under the consignment contract; they not belong to the consignees, but the consignees sold them commission, and there were such contracts usually. These racts have been looked after by me with Phelps, Dodge & ner and Selz, Schwab & Co., each year, and sub- ed to me for several years. Then that did not come up in uary; we did not have anything to do; I do not remember self anything about this question of the sixth floor. I think ad always said to some of our people that their property ht to be kept free from any intermingling with the property the consignees, but beyond that general expression I do not member any discussion; but there was another attempted ten agreement which possibly you have in mind which Mr. ey, Mr. Fargo and myself proposed if we could get reduced to ting, the agreement that we made about advancing $50,000, ause the Fargos wanted that, as I remember, specifying con- ns upon certain contingencies under which judgment might ntered. Isn't that so?

he Witness: That hasn't anything to do with these con- ments.

r. Beale: And we found it impracticable to make any ement; it was a difficult thing to do, and we abandoned the

. The Fargo Company failed on August 6, 1896; about what ntity of rubber goods was there on hand on this sixth floor hat time?

. I cannot tell you the figures.

. Cannot you approximate the figures?

. No; I do not know that I could; they plainly show in the s that are here—I should say, $100,000.

. In value?

. In value.

. What became of these goods after August 6, 1896?

. They were taken out of the premises by the rubber com nies.

. Went back into their possession?

. Went back into their possession.

Testimony of Charles E. Fargo.

Q. So that as a matter of fact the two rubber companies g you no credit whatever in 1896 in the way of selling you chandise?

A. They did give us credit to a small amount, it was t season for selling these goods, and they shipped us goods we remitted for them at the end of thirty days.

Q. Well, were these goods consigned to you?

A. These goods were consigned to us and we remitted fo proceeds of the sold goods.

Q. Did the two rubber companies give you any credit du the year 1896?

A. Yes, sir.

Q. What credit—I mean credit for merchandise?

A. I cannot tell you the amount.

Q. Then do you wish us to understand that the two rub companies sold Fargo & Co. any merchandise during 1896?

A. They did not sell us.

Q. Then how can you say they gave you any credit merchandise?

A. Because we did not remit every day, that is all, for g sold; they were goods on commission and sold.

Q. Then they gave you no credit other than merely entru ing the custody with you?

A. That is right. That may be it.

Q. That is what you mean?

A. That is what I mean.

Q. Now, Mr. Fargo, in August, 1896, did the Fargo Comp become embarrassed?

A. Yes, sir.

Q. Why?

A. Because business had not been as good during the mo of June and July as anticipated.

Q. What did you do with respect to the rubber companies July or August, 1896? Did you go to New York to see them?

A. I went to New York to see the rubber companies in t last of July, 1896.

Q. What occurred?

A. For this purpose—

Q. No; what occurred, when you got there, between you a the representatives of the rubber companies?

A. They agreed to what I asked them.

Q. That does not throw any light on the subject?

Testimony of Charles E. Fargo.

A. If you will allow me, I will state my purpose; that would ow light on it.

Q. Go ahead; state in your own way, then.

A. We had a note maturing on th 2d of August at the Metro- litan National Bank, that I was not willing to renew without ey were included in a judgment note.

Q. What do you mean by they? Whom do you mean by hey"?

A. The Metropolitan National Bank.

Q. In what judgment note?

A. In the judgment note held by the rubber companies.

Q. Go on.

A. Unless they were included in the judgment note. I went New York to see if they were willing to have that done, and ey acquiesced in that.

Q. Did you tell them that unless that note was extended rgo & Co. would have to go overboard?

A. Yes, sir.

Q. Would have to fail?

A. Yes, sir.

Q. When was that—when did that interview take place?

A. The latter part of July—the very last of July.

Q. 1896?

A. Yes, sir.

Q. Then you came back to Chicago?

A. I came to Chicago.

Q. Did you call on the Metropolitan National Bank on your urn—

A. No, sir—not immediately.

Q. —For the purpose of renewing that note?

A. I do not know that I did. I simply sent and had it re- wed.

Q. That is, on August 2, 1896?

A. On August 2, 1896, if I remember the date rightly; it was out that time, I think, on August 2d.

Q. What happened between August 2 and August 6, 1896?

A. On August 5th we had a note mature that we had made incorrect memorandum of, having it down dated as due the th, and we had made arrangements as we supposed to meet yments during August, and were not prepared to meet the te on August 5th, and telegraphed the parties to that effect.

Q. Telegraphed who?

A. The parties to whom we owed the note.

Testimony of Charles E. Fargo.

A. I do not know that it was mentioned at that time; that w a mere matter of after discussion or after decision; I do n remember that that was in at that time; I do not know an thing about it—I have forgotten about that.

Q. Was that the understanding, that the rubber compa should so control the board of directors that you could make disposition or give any preference or security to other credito

A. I think it was exactly that we could not give judgme notes to other creditors.

Q. Or any other security?

A. I do not remember about that—I suppose that was include but I do not remember.

Q. Was there any change in the by-laws discussed, so th no judgment notes or chattel mortgages or other means of giv preferences could be executed by any of the old officers?

A. I do not remember that there was.

Q. On page 35 of the record book at a meeting of the board directors of the Fargo Company held upon January 9, 18 section 3 of article 4 of the old by-laws was amended so as read as follows:

"The president, or in his absence the vice president, shall empowered to sign and endorse ordinary promissory notes, a to make and execute contracts, drafts and checks, for the pu pose of carrying on the usual and necessary business of the co pany, but no officer or officers of the company shall have t power to sign, make or execute any mortgage, warrant of att ney to confess judgment, contract or other instrument in wr ing having the effect to create a lien or charge, or possibil thereof, upon the property and assets of the company or a part thereof, or having the effect to give any creditor or credit of the company any lien, charge or security upon said prope and assets or any part thereof, except pursuant to the spec authority of the board of directors." Do you now recall th resolution?

A. I had forgotten it entirely.

Q. You recollect it now, don't you?

A. Now that you read it, yes.

Q. The purpose of that resolution was to tie the hands of t corporation as indicated in the resolution, so that the boa could give no security, no preference, no lien, except with t consent of the directors who represented the two rubber co panies; is not that true?

A. Yes, sir.

Testimony of Charles E. Fargo.

Q. Were the book accounts discussed at that time—in January, 1896?

A. I think they were.

Q. Mr. Johnson wanted to put his hands on the book accounts also, didn't he, as an additional security?

A. I think he did.

Q. And you agreed to permit him to do so?

A. Yes, sir.

Q. That is a part of the general arrangement?

A. Yes, sir.

Q. As set forth in the resolutions?

A. Yes.

Q. In the affidavit filed by you in this case on the motion for the appointment of a receiver occurs the following:

"That judgment notes should be given to secure the entire indebtedness to said rubber companies, that no judgment note should be given to other creditors, and that in the event C. H. Fargo & Co. should at any time be unable to continue its business, it would assign and transfer for the benefit of said rubber companies, as further security for their indebtedness, its books of account and bills receivable;" is that true?

A. I think it is.

Q. Was that a part of the original agreement in January, 1896?

A. I think it was, sir.

Q. Made between your company and the two rubber companies?

A. Yes, sir.

Q. Was that agreement made at the interviews you had with Mr. Johnson in January, 1896?

A. I think it was.

Q. Did he insist upon that condition?

A. I think so.

Q. And in August, 1896, the Fargo Company did transfer to the United States Rubber Company all its book accounts, bills receivable, choses in action, and so forth, did it not?

A. Yes, sir.

Q. Was that done in pursuance of the agreement made in January, 1896?

A. Yes, sir.

Q. What was the total indebtedness of the Fargo Company on August 6, 1896?

A. I do not remember.

Testimony of Charles E. Fargo.

Q. Well, about?

A. I should say about $375,000.

Q. Although you were under the impression that $25,000 all you needed at your first interview with Johnson in 189 as you made closer examination into the affairs of the F Company you found that you needed $50,000—

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Did Mr. Johnson demur to the increase from $25,00 $50,000?

A. I think he did at first.

Q. Well, did he agree to loan you $25,000?

A. No, sir.

Q. Then he had not agreed to lend you anything unti finally agreed to lend you $50,000; is that right?

A. I think that is it exactly.

Q. Did you give Johnson the names of the parties to w you had to pay this paper, or the parties to whom you inte to pay the $50,000 you borrowed?

A. I have forgotten whether we gave him the names or I had a list of bills payable for January and possibly the na were there.

Q. Did you say possibly or positively?

A. I said possibly. I had the names and amounts.

Q. How much was due the rubber companies?

A. $20,000.

Q. In January?

A. In January.

Q. So out of that $50,000 you paid the rubber companies 000 in January?

A. No; we paid the rubber companies before, if I remem rightly, before we got the $50,000.

Q. Well, you needed the $50,000—

The Witness: For instance, there was $80,000, or about due in January, and out of that there might have been—oh, I don't know—I don't know that we paid anything to the ru companies in January, possibly we did—I cannot recollect actly how that stood, but there was about $80,000 due in J ary.

Q. Well, is it not the fact that you paid the rubber compa between January 6th and August 6th more than the $50,000 loaned you temporarily?

A. We paid them whatever was due in notes, and it exceeded ,000, I am very sure.

Q. How many interviews did you have with Mr. Keith at the ice of the Metropolitan National Bank in the early part of ugust, 1896, relative to these matters?

A. I do not know that I had more than one, possibly two.

Q. Anyone with you?

A. I think not—I don't know.

Q. How long had this $40,000 indebtedness, owing by the Fargo ompany to the bank, been in existence in the form in which it ood, say on August 1, 1896?

A. Not to exceed four months.

Q. Was it all created new four months prior to August 1, 1896?

A. We owed the bank off and on different amounts; for in- tance, in March we owed them $20,000, and between March and he 1st of July borrowed $20,000 more.

Q. That made the $40,000.

A. That made the $40,000.

Q. How much did you owe them in January, 1896?

A. Oh, I should say $50,000—I do not remember exactly, but think $50,000. I cannot state these figures exactly. That is s near as I remember it.

Q. Did you renew notes as they matured, pay some, and arry on your business?

A. We were owing them different amounts at different times.

Q. You stated this morning that you went to New York in the st of July, 1896, and told the two rubber companies that you ad, I believe, a $20,000 note—

The Witness: $10,000.

Q. (Continuing.) A $10,000 note maturing on August 2d, 96, and that you would not renew that note or ask the bank renew it unless the bank was taken care of in the same way hat the two rubber companies had been taken care of?

A. Yes, sir.

Q. Now, why did you take that stand the last of July, 1896?

A. Because money was coming in very much more slowly han we had anticipated.

Q. What harm was there in renewing the bank's note if the ank was willing? What was there in your mind, why you did ot wish to renew that $10,000 paper, the paper with the bank?

A. Because in the early part of August, in figuring over the ndebtedness we had to meet, I found that unless I could get

Testimony of Charles E. Fargo.

possibly more money there might come trouble when they w
have to foreclose their judgment notes.

Q. You mean the rubber companies?

A. Yes.

Q. What had they to do with the bank's notes, what wa
that made you so solicitous about the bank, in July, 1896?

A. Simply I did not want to renew a note and have tro
come immediately afterwards—I did not—

Q. Well, merely renewing the notes would not be tal
anything really from the bank; wasn't there something els
your mind?

A. No, sir. I had nothing else in my mind.

Q. (Continuing.) Whether you owed the bank on Augu
or owed the bank that money four months later, would
diminish the assets of the bank. You were not required to m
any statement why you were required to renew it, were you?

A. No, sir.

Q. What was it made you so solicitous that you left
business in Chicago, traveled to New York and told the ru
people in New York that you would not ask the bank to re
that note unless the bank was taken care of in the same
that the rubber companies were protected? What was t
operating in your mind?

A. I think just as I stated to you, that payments were com
in very slowly, and I thought there might be trouble, and I
not want—renewing a note is the same as making a new loa

Q. Without getting anything for it, without any fresh loan

A. It amounts to the same thing.

Q. And you did not feel it would be quite square for yo
renew that note or postpone the payment of it without pro
ing the bank?

A. Yes, sir.

Q. Or get additional credit in the way of renewal wit
securing the bank?

A. Yes, sir.

Q. How?

A. That is right.

Q. You did not think it was quite honest, isn't that the tr
Mr. Fargo?

A. Probably; possibly that is the case.

Q. And it was square and honest dealing between man
man—that was the impression in your mind?

A. Yes, sir.

Q. In other words, you felt if you went back and asked Mr. ith to renew that note, with the knowledge you had of how ur company was tied up by the two rubber companies, you did t regard that as honest dealing, without securing the bank at e same time?

A. Yes.

Q. What is the answer?

A. That is right.

Q. Now, Mr. Fargo, feeling as you did on that subject, you k your grip and went to New York, and told that fact to the bber people, did you not?

A. Yes, sir.

Q. In substance?

A. Yes.

Q. And they yielded to your request?

A. Yes.

Q. Opened their arms and took the bank in; is that right?

A. Yes.

Q. In the course of your dealings with the Metropolitan Bank 1896, you gave ordinary, plain, simple promissory notes, did u not?

A. Yes, sir.

Q. And the only judgment notes that you gave the bank were e two judgment notes dated August 5, 1896, concerning which u have testified to-day?

A. Yes, sir.

Q. Now, when you gave those two judgment notes dated ugust 5, 1896, was any of the paper held by the Metropolitan ational Bank of Chicago against your company due?

A. No.

Q. When did the first and earliest piece of paper mature with spect to August 5, 1896?

A. I think the latter part of the same month—I don't know e exact date, sir.

Q. Was that a large or small piece?

A. $10,000.

Q. When did the next piece mature?

A. I do not remember.

Q. Probably?

A. It may have been the next month and it may have been o months. I do not know when it matured.

Q. It matured in four months?

A. The paper was made in four months—perhaps ninety

Testimony of Charles E. Fargo.

days—whatever date it was made—sometimes two i
and sometimes not any.

Q. Mr. Fargo, I direct your attention to the recor
ginning at page 25, which record begins as follows:
of a meeting of the directors of C. H. Fargo & Co., h
office of the company January 6, 1896, pursuant to not
Is it not true that this was an error, and that th
was held at the law office of Isham, Lincoln & Beal
the parties assembled at that office and not at your o

A. I think they were—I am very sure that was h
office.

Q. Was there any meeting at your office in fact--a
meetings?

A. There was several of them.

Q. Who were present at that meeting?

A. At that meeting these people were present
brothers and Mr. Hayes and Mr. Steele.

Q. Who prepared these minutes beginning on pa
ending on page 29?

A. I think they were written in the office of Mess
Lincoln & Beale.

Q. That is the fact, is it not, and they were hande

A. I think so; I think it is.

Mr. Beale: There were not any meetings held at
till the time of the failure.

Mr. Newman: You are wrong about that, Mr. Beal

Q. I call your attention to the records on page 34 of
book of the meeting held on January 9, 1896. It reads
"Minutes of the annual meeting of the board of dire
H. Fargo & Co., held at room 718, 184 LaSalle street, C
January 9, 1896, at 3:30 p. m." Do you remember tha

A. I remember a meeting there.

Q. Room 718, 184 LaSalle street, is the office of Mess
Lincoln & Beale?

A. Yes, sir.

Q. Who, throughout this transaction or these tr
represented and were the general counsel of the two r
panies, were they not?

A. I suppose they were.

Mr. Beale: General counsel out here.

Q. General counsel out here?

A. Yes.

Testimony of Charles E. Fargo.

Q. Do you remember Mr. Sadler, who came here in August, [illegible]?
A. Yes, sir.
Q. How long after you left New York did he come to Chicago?
A. I do not remember what date he did arrive here.
Q. Did he come pursuant to an understanding had with you [illegible] New York?
A. I had no understanding with him in New York.
Q. Did you send for him?
A. No, sir.
Q. Were you surprised to find him here?
A. No.
Q. Well, he came here to close your company up, didn't he?
A. No; I don't think he came for that. I don't remember about [illegible]: I think not.
Q. Do you remember that in January, 1896, when you and [illegible] Johnson and Mr. Beale and Mr. Cratty were discussing the [illegible]st feasible way of absolutely securing the two rubber com[illegible]nies, that in the course of those discussions the question of [illegible]ring chattel mortgages was discussed, and that you had agreed [illegible] give chattel mortgages, but upon reflection the lawyers did [illegible] deem it safe to take chattel mortgages for the two rubber [illegible]mpanies?
A. I do not remember; the matter of security was so largely [illegible] matter of law that it did not impress me very strongly; that is [illegible] say, the particular method.
Q. Do you remember the word chattel mortgage having been [illegible]ed?
A. Now, I come to think of it, I think the word chattel mort[illegible]ge was mentioned, and I did not want it, if I remember [illegible]htly.
Q. On account of its publicity?
A. On account of its having to go on record.
Mr. Beale: Part of the question is right, but you want to [illegible]alify that. Everybody understood that it could not be done.
Q. The subject was discussed?
A. The subject was discussed.
Q. And you objected to it on the ground of publicity?
A. I think I should have done so.
Q. Did you?
A. I don't know whether I did or not.
Q. Mr. Fargo, were you present at the sale of the merchandise [illegible]longing to your company and seized by the United States

Testimony of Charles E. Fargo.

Q. How did you come to fix on this sum of $25,000—who name that? Did you, or the bank?

A. Without question the bank.

Q. The two deeds that have been offered in evidence runnin from the Fargo Company and signed by you and your brother t the Metropolitan National Bank and conveying the real estat and buildings at Dixon, Illinois, were executed and delivered t the bank in pursuance of this resolution, were they not?

A. Yes, sir.

Q. Did you deliver them on the same day the resolution wa passed, namely, August 5, 1896?

A. I do not know whether it was that day or the next.

Q. At the time the two notes were delivered to the bank, di the bank have in its custody the judgment notes?

A. Yes, sir.

Q. I show you the judgment note attached to the papers i the case of the Metropolitan National Bank vs. C. H. Fargo & Co in the Circuit Court of Cook County, Illinois, general numbe 160,223, and ask you whether that is one of the two notes t which you refer as being in the possession of the bank at th time the two deeds were delivered?

A. It is.

Q. Where is the other judgment note?

A. I think it is in my possession.

Mr. Newman: Please produce it.

The Witness: I can produce it if I have it. I think I have i among my papers; it is not in my pocket.

Q. Who gave it to you?

A. Mr. Follansbee.

Q. When—at the time you delivered the two deeds to him?

A. At the delivery of the deeds; yes, sir.

Q. Whom did Mr. Follansbee represent?

A. The Metropolitan National Bank.

Q. As its counsel?

A. I presume so.

Q. Was that judgment note delivered you by Mr. Follansbee and which is now in your possession, given to you as a cancel lation of $25,000 of the indebtedness of the Fargo Company to the bank?

A. It was given in consideration of two deeds.

Q. These two deeds which have been offered in evidence t which I have directed your attention?

A. I presume so—yes.

And the two deeds, and the property which the two deeds , were made and delivered in cancellation of that second judgment note?

Yes, sir.

And when the two deeds were delivered by you or on be- the Fargo Company to the bank, that $25,000 note was dered to you and cancelled?

Yes, sir.

Is that right?

Yes, sir.

And you have it now in your possession?

I think I have it.

This judgment note to which I have just directed your at- n and upon which the bank confessed judgment against & Co. in the Circuit Court of Cook County, Illinois, general er 160,223, bears what date?

August 5, 1896.

Does the judgment note which was cancelled and now in possession and to which you have just referred bear the date, August 5, 1896?

I think it does.

Both made at the same time?

Both made at the same time.

Is it not a fact that at the very time these judgment notes made out and delivered by you to the bank, it was under- that the bank was to receive and accept the real estate uildings at Dixon, Illinois, in satisfaction of one of the two nent notes?

I think so—I think that they were made out in two $25,- otes in order that one might be used in that way.

And is it not a fact—have you any doubt about that? t that the reason the two notes were made out—$25,000

I do not know of any other reason why they should have made out in that way.

This all occurred at the same time?

This all occurred at the same time.

The $10,000 was given to you at the same time?

At the same time.

You did not execute the two judgment notes and deliver leeds until you got your $10,000, did you?

I presume not; I don't think I did.

You were looking for that $10,000, weren't you?

Testimony of Charles E. Fargo.

A. Yes, sir.

Q. And one of the conditions you imposed was that you should have the $10,000 before you executed the two judgment notes on that day?

A. I think it was.

Q. Mr. Fargo, did you tell the two rubber companies in January, 1896, that unless they loaned the Fargo Company $50,000 that the Fargo Company would have to fail in business and cease in existence as an active corporation?

A. I do not know that I said that.

Q. Did you say anything like it?

A. I did say that we had more payments to meet in January than we could meet.

Q. Did not you tell Mr. Johnson in substance, in January, 1896, that unless he got you $50,000 your company could not hold out, and would have to go to the wall?

A. Just as I said before, we had more payments to meet in January than we could meet.

Q. Did not you say to Mr. Johnson, in substance, what I have asked you? Although you may also have said to him what you have just stated, but did not you say to him that the company could not stand unless the company got $50,000 more money, the company would have to go to the wall?

A. The amount was discussed pro and con, as far as I recollect. I thought it would not require that much at first.

Q. Well, go on?

A. And after looking at all the figures and everything, it was concluded that $50,000 would be required.

Q. What amount did you first name to Mr. Johnson as sufficient to tide the company over?

A. I think it was $25,000.

Q. What did you say to Johnson at the time you asked him for a loan of $25,000?

A. That we had more demands to meet in January than we could meet.

Q. Did you tell him what would happen if you did not get that $25,000?

A. I do not know that I did.

Q. Did he guess what would happen?

A. Well, he could not help it.

Q. What would have happened?

A. Just the same as happened in August—some notes would have gone to protest.

Testimony of Charles E. Fargo.

Who is Mr. Johnson?

He at that time was the selling agent of the United States ber Company.

How did Johnson happen to be here early in January, 1896, how did you happen to talk to him on that subject?

Because I wrote to him and asked him to come.

Did you tell him what you wanted of him?

I do not remember what I told him.

Well, he came.

Well, he came.

Immediately?

Yes, sir; almost immediately, I think, after I wrote him.

When he got here, what did you say to him?

Exactly what I have stated, that we had more payments eet in January than we could meet.

Anything else?

I don't remember what was said beyond that, except we meetings every day for four or five days.

What had Johnson to do with the fact that you were short money and could not meet some maturing debts?

The very fact that we owed him more money than we d any one else, and the further fact that he had helped us e before.

Well, what did Johnson say to you when you made the uest for a $25,000 loan?

He was not sure that he could make it at first.

Did not Johnson, at that interview, when he was advised t you wanted a loan of $25,000, say to you that he would not it, and that you, on behalf of the Fargo Company, should pre- the two rubber companies without any loan by giving them lgment notes and such other securities as they might be ad- ed by their counsel would be necessary to prefer them?

A. I think he did request—make such a request

Q. Did not he insist upon it pretty strongly?

A. He may have done so.

Q. Did not you tell him in reply to that request that if the ber company did not lend your concern $25,000, you intended reat all the creditors alike and give nobody any preference?

A. I do not know that I did say that.

Q. Did not you say that in substance?

A. I do not think I did.

Q. Refresh your recollection, Mr. Fargo; did not you say in bstance to Mr. Johnson in that interview, in January, 1896,

Testimony of Charles E. Fargo.

"If we have got to borrow, we are going to treat everybody al unless there is some special reason for preferring you, and do not think there is now"?

A. I do not remember to have said that.

Q. Well, did not you say that in substance?

A. I do not remember to have said anything like that.

Q. Then why didn't you comply with his request and gi him the preferences for which he asked you?

A. Because I thought we could go on if we got some mon I wanted to bring as strong a pressure as possible.

Q. But at first he declined to lend any money, and asked f for preferences for the two companies he represented; now, w did not you grant those preferences?

A. Because I thought if we had more money there would no question about our going on.

Q. But Johnson did decline to give you any money at fi and then backed up that declination by requesting or urgi you for security for the companies he represented. Why did y not comply with that request?

Mr. Beale: I do not think that is just a fair statement. I not want to interpose a lot of objections but I do not think th is quite a fair statement there, to say demanded.

(Question amended to read as above by substituting t word requesting for demanding.)

A. Because I thought we could get the money.

Q. Did not you tell Mr. Johnson in substance that if his t companies would not lend you enough money to pay those matu ing notes, you would not prefer them but would treat all y creditors alike? I do not mean that exact language, but that substance?

A. I do not remember to have made any statement as to tha

Q. You did tell Mr. Johnson the company would have to go the wall, didn't you, if it did not get the money?

A. It would amount to that.

Q. You did not promise Johnson any security or preferen at that time?

A. No, sir.

Q. Did you tell him how you intended to treat the creditors case you had to go to the wall and did not make the loan?

A. I do not know that I did.

Q. You do not wish to be understood as saying you did not?

A. I do not wish to be understood as saying I did not, becau I do not remember what I said in that case.

Testimony of Charles E. Fargo.

Q. How long was Johnson here in Chicago on that business?
A. I should think a week.
Q. Negotiating this matter?
A. Yes, sir.
Q. What was the final agreement between you and Johnson?
Mr. Beale: Let's see a minute if we cannot straighten this up. He left here. This was closed up on the 6th of January; he left that day?
The Witness: I think he did.
Mr. Beale: And he did not get here until the 1st or 2d?
The Witness: He did not get here until the 1st or 2d. I said about a week—that is my recollection of it.
Q. What was the final agreement that you and Johnson reached in regard to the matter?
A. The final agreement was to deliver judgment notes to the amount necessary to cover our entire indebtedness, and he was to give us $50,000 in cash.
Q. And judgment notes to cover that also?
A. Judgment notes to cover that.
Q. Anything else?
A. No, sir. That was the—it all amounted to.
The Witness: There was no agreement in writing—
Mr. Newman: I don't care about any agreement in writing: you can make an oral agreement.
The Witness: That was the agreement.
Q. Weren't you to give any other security?
A. Why, in regard to the directors?
Q. Yes.
A. We were.
Q. What was that?
A. That the majority of the board of directors of C. H. Fargo & Co. were to be changed so that we could not give other preferences.
Q. Changed, how?
A. Other people put in, in place of those that were there.
Q. What other people? Who were these people to represent?
A. People named by the United States Rubber Company.
Q. And those new directors were to represent the United States Rubber Company?
A. Yes, sir.
Q. In control of the Fargo Company as directors?
A. As directors.
Q. How about the secretary and treasurer?

Testimony of Charles E. Fargo.

Q. With practically the same interests?
A. Yes, sir.
Q. It was the Fargo family?
A. Yes, sir.
Q. And the firm for many years prior to its merging in corporation had done business with the rubber companie one of them, had it?
A. Yes, sir.
Q. With which one of these companies had it longest business?
A. L. Candee & Company.
Q. How was the business with L. Candee & Company do by purchases from them or consignments?
A. Consignments.
Q. From L. Candee & Company?
A. Yes.
Q. Always?
A. I have forgotten what the contracts were; for a long they amounted to consignment, however; as we conducte the goods were theirs till sold. We had consignments from Candee Company, and we did buy from L. Candee & Comp too, both.
Q. You made purchases as well as received consignm from the L. Candee & Company?
A. Yes, sir.
Q. Mr. Johnson was treasurer of the L. Candee Comp was he not?
A. Yes.
Q. What was the character of your dealings with the U States Rubber Company—consignments exclusively or purch exclusively, or both?
A. Consignments.
Q. Do you know what the general method of doing busi here and elsewhere was on the part of the United States Ru Company, whether it was by consignments or sales, or b
Mr. Newman: Objected to; we object to that.
A. All I know is our own contract, and I supposed that the same as that used elsewhere.
Q. Did you or did you not have any information in any as to the method of the United States Rubber Company other people in the same line of business as yourself?
Mr. Newman: Objected to as immaterial and irrelevant.

A. Yes; I saw other contracts; I saw one or two special con- Testimony of Charles E. Fargo.
cts—contracts that were for other people, I mean.
Q. Well, so far as you know.
Mr. Newman: Were those contracts in writing?
The Witness: Printed contracts.
Mr. Newman: In writing—signed?
The Witness: Yes; signed contracts.
Mr. Newman: Then we certainly object without the introduc-
on of the instruments.
Q. You may state whether it was your understanding that
e United States Rubber Company in doing business with you
s using the same methods that it was using in doing business
ith other dealers?
Mr. Newman: We object to that as not cross-examination.
Mr. Beale: You asked about consignments?
Mr. Newman: Not with other people.
The Master: Answer subject to objection.
A. I understood we were doing business the same as others.
Q. About when was it that you began doing business with
e United States Rubber Company?
A. On the formation of the United States Rubber Company,
don't remember the exact date, ever since they were formed,
e United States Rubber Company were formed.
Q. The United States Rubber Company was formed after C.
Fargo & Co., the corporation, was formed?
A. Yes, sir.
Q. About what had been the extent of your business with
e rubber companies in the years prior to 1896?
A. Oh, we had sold as high as $200,000 worth of their goods.
Q. In a year?
A. In a year.
Q. To what extent prior to that time had you sometimes been
debted to them—the largest amount of indebtedness?
A. We had owed them $250,000.
Q. Do you remember when you had owed them $250,000?
A. I think in 1893.
Q. In saying that you owed them $250,000, do you or do you
include in that the amount of consigned goods which you
d not disposed of?
A. We owed them $250,000 in notes; part of it may have been
dvances on consigned goods.
Q. That is, if I understand you correctly, it was sometimes
e practice of the rubber companies when consigning large

Testimony of Charles E. Fargo.

quantities of goods to require a *certain amount of money* advanced by you to them on account of consignments?

A. Yes, sir.

Q. You said, that is, if I understood you right in your testimony, that the United States Rubber Company, or the ber companies—perhaps you stated it, including both helped your company at one time previous to 1896; how did help you—by a direct loan of money?

A. No, sir; by extending notes.

Q. In other words, by giving you extra time?

A. By giving us extra time.

Q. You never had had any troubles with the rubber panies at any time?

A. No, sir.

Q. When had the rubber companies given you any such and extended notes?

A. In 1893.

Q. Did they do so in any other year, do you remember?

A. No, sir.

Q. Never before 1893?

A. No, sir.

Q. Did you ever ask them for extensions before 1893?

A. No, sir.

Q. How did it happen that they gave you the extensions the extensions were sought, in 1893?

A. Under about the same conditions as in January, 189

Q. Did you at any time subsequently till 1896 ask the extensions after 1893?

A. No, sir.

Q. You did not in 1894 nor in 1895? A. No, sir.

Q. Were not the special conditions which brought out t tensions in 1893 due to the demand of the Metropolitan for some judgment notes at that time from you—your comp

A. Yes, sir.

Q. Mr. Keith is the president of the Metropolitan Na Bank, is he not?

A. Yes, sir.

Q. Do you remember about when those judgment note given, or when the demand for them was made in 1893?

A. I think it was in July, 1893.

Q. What was approximately the indebtedness of your pany to the bank at that time?

A. $130,000.

Complainant's Evidence—Testimony.

Testimony of Charles E. Fargo.

Q. What was the indebtedness of your company to the rubber companies at that time?

A. About $200,000—I do not remember the exact amount, but that is approximately.

Q. Is it not possible that in fixing the amount of the indebtedness to the rubber companies you include the amount of, or value of, consigned goods undisposed of belonging to them, which you then had on hand?

A. It was, I think; that indebtedness was notes, part of it; may have been advance notes, as I said before, for goods.

Q. What happened at that time about the indebtedness due to the bank? Was not demand made by Mr. Keith for some judgment notes?

A. There was.

Q. Why did Mr. Keith make the demand as stated by him to you? Let me ask the question in a different way. Was there anything exceptional or special in your situation as known to him, so far as you are aware, that caused him to make that demand?

A. Except that we owed him, as he said, a large amount of money. I remember that; and the general financial situation of the country was bad.

Q. The general financial situation of the country was bad?

A. Yes, sir.

Q. And he wanted to feel safe, and so demanded judgment notes?

A. Yes, sir.

Q. And his demand was not altogether agreeable to you?

A. No; not quite.

Q. As a matter of fact you were a good deal irritated?

A. Yes, sir.

Q. Do you remember whether Mr. Johnson was here about that time?

A. He was.

Q. He did not come here, did he, so far as you knew, in any special connection with the bank's demand?

A. He came here because I asked him to come, I think, at that time.

Q. Did you explain the situation here to Mr. Johnson then?

A. I did, sir.

Q. Did he press you for judgment notes?

A. No, sir. In fact, he gave me the extension of time before that.

Testimony of Charles E. Fargo.

Q. On the indebtedness to his company?

A. Yes, sir.

Q. In substance, did not Mr. Johnson say to you at tha that he was not desirous of having any judgment notes; as his companies were concerned, he was satisfied wi condition of things, but if you were going to give judgment to the bank, then he thought he wanted them too?

A. Yes, sir.

Q. So as to stand on the same footing?

A. Yes, sir.

Q. That was the extent of his demand or request, wasn

A. That was it exactly.

Q. An arrangement was ultimately made at that tim there not, by which judgment notes were given to both the and to one or both of the rubber companies?

A. Yes, sir.

Q. These judgment notes were afterwards all subseq paid, then?

A. Yes, sir.

Q. Had your company previously given judgment n any other creditors?

A. No, sir; it was the first time they had ever given ment notes.

Q. You so stated to Mr. Keith, did you not?

A. Yes, sir.

Q. And to Mr. Johnson?

A. Yes, sir.

Q. I was brought into that transaction by Mr. Johnso I not?

A. Yes, sir.

Q. And drew the notes?

A. I don't remember whether you did—you drew s them, yes.

Q. Who was acting for the bank then?

A. John H. Hamline.

Q. And the notes were drawn by us, working together?

A. Your notes were drawn to the United States Rubbe pany.

Q. And he accepted the form I drew?

A. Yes, sir.

Q. What was the size of this building at Dixon, a mately?

A. About 200 by 45 feet—the main building.

Q. About how many stories?
A. Three stories.
Q. Were there some side buildings?
A. Yes, sir. There was an addition of, I should think, 65 by
feet.
Q. Two stories?
A. Three stories, it is.
Q. Made of brick?
A. Brick.
Q. Did it cover all of the land which your company owned?
A. No, sir.
Q. What was the size of the plot on which it stood?
A. I don't remember; I should say it was about 200 by 400—no,
was more than that; 300 by 400, perhaps, and maybe larger than
hat.
Q. There were some claims existing against this real estate
n Dixon, in January, 1896, were there not, and in August, 1896,
ere there not.
A. I do not think there was in January, 1896; I do not think
hat.
Q. Well, in August, 1896, there were some mechanics' liens?
A. That was for the extension I spoke of.
Q. When was that erected?
A. In March or April.
Q. Of 1896?
A. 1896.
Q. After this arrangement in January?
A. Yes, sir.
Q. How much of the extension or how much of a building
as that?
A. It was an extension, I should say, of 60, perhaps 65, by 45
eet.
Q. An extension of the main building—an enlargement of it?
A. An L.
Q. How many stories?
A. Same as the other, three stories.
Q. What was the purpose of that extension?
A. Simply because we had not facilities enough in the old
uilding to keep up with the trade that we were having in the
seasons.
Q. It was for the purpose of increasing your business?
A. It was for the purpose of increasing the manufactory.

Testimony of Charles E. Fargo.

Q. Through what portions of the year were you largely engaged in manufacturing? Did it continue throughout the y

A. The last two years the largest portion of our manufac ing was in February, March and April.

Q. With regard to your business generally throughout year, was it a uniform business or were there not certain tions of the year when you were incurring large expenditu getting small returns and then getting large returns in c parison with the expenditures?

A. It was in seasons.

Q. It was a business in seasons?

A. It was a business in seasons.

Q. It was particularly so with rubber goods?

A. Entirely so.

Q. At certain seasons of the year there would be no sales all?

A. Yes, sir.

Q. Your business was wholesale, was it not, so far as y sales were concerned?

A. Yes, sir.

Q. Altogether?

A. Yes, sir.

Q. About the 1st of January, 1896, you asked Mr. Johnson come out here, did you not?

A. Yes, sir.

Q. And he came?

A. Yes, sir.

Q. Do you remember whether he same alone or did Mr. Sad come with him?

A. Mr. Sadler came with him.

Q. What was Mr. Sadler's position?

A. I think assistant treasurer—some financial part of t business.

Q. So far as appeared, these gentlemen had charge of t sales and of the credit and collections, did they not?

A. Yes, sir.

Q. Where were your interviews with Mr. Johnson at th period held, if you know?

A. Largely in the Auditorium Annex.

Q. Mr. Johnson and Mr. Sadler had rooms there, had th not?

A. Yes, sir.

Q. And the interviews were largely in the parlor connected with their rooms?
A. Yes, sir.
Q. Was not Mr. Sadler generally present?
A. I think he was always; yes, generally.
Q. Mr. Johnson and Mr. Sadler both?
A. Yes.
Q. And was not I present most of the time?
A. Yes, sir.
Q. Do you remember whether I was present at the very first interview you had with Mr. Johnson after he came to Chicago?
A. I think not.
Q. But if not, I was at the second interview, wasn't I?
A. Yes, sir.
Q. From that time on I was present at practically all of the subsequent interviews which took place there, wasn't I?
A. Yes, sir.
Q. Was Mr. Cratty present at the first interview you had with Mr. Johnson?
A. No, sir.
Q. But Mr. Cratty was also present at pretty nearly all of the subsequent interviews, was he not?
A. He was present at some of them.
Q. Most of them?
A. Most of them; yes.
Q. Your two brothers were commonly present, were they not, at those subsequent interviews?
A. One of them was.
Q. Sometimes both?
A. Sometimes both.
Q. What was your belief at that time, Mr. Fargo, as to the financial condition of the Fargo Company?
Mr. Newman: Objected to on the ground that it is not cross-examination; on the further ground that the secret belief of the witness is not a matter that can bind any one. There is no way of combating it; no way of meeting it; no human being except the witness has any knowledge on the subject of what his personal private belief might have been; also objected to as irrelevant.
Mr. Beale: Let me change the question a little.
Q. Did you at any of these interviews express your belief as to the condition of the company and its prospects?
Mr. Newman: We object to that on the ground that it is not

Testimony of Charles E. Fargo.

marshal in August, 1896, under two executions in favor of t two rubber companies?

A. Yes, sir.

Q. Was that sale well attended?

A. Yes.

Q. There was an unusually large number of bidders at th sale?

A. I don't think there was; I think there were more curios seekers than bidders.

Q. Isn't it a fact that there were more than ten or fifteen ac ive bidders at that sale?

A. No; I don't think there were.

Q. What is your recollection as to the number?

A. I don't think the active bidders there were more th three or four, maybe four or five, that I noticed.

Q. There was a great deal of activity between these four five, wasn't there?

A. Yes; there was a good deal of activity between four or fi

Q. Did the rubber companies bid, or somebody bid for them

A. They did.

Q. To whom was that entire stock of merchandise, fixtur and so forth sold?

A. To The Fair.

Q. A Chicago corporation known as The Fair?

A. Yes, sir.

Q. What was the amount of their bid?

A. $65,000.

Q. At what figure did the rubber company stop bidding?

A. $64,900, or something that compelled a $65,000 bid

Q. A fraction under $65,000?

A. Yes, sir.

Q. They would not go any higher?

A. No, sir.

Q. The next day after the sale in Chicago, the sale of t personal property, machinery and so forth, took place at Dix Illinois, did it not?

A. I do not know as it was the next day; I have forgotten do not think it was the next day; it was within a short ti afterwards.

Q. Within a short time of the Chicago sale?

A. Yes.

Q. Who bid in the property at the marshal sale at Dix

s—I am speaking of the personal property, not the real Testimony of Charles E. Fargo.
?
I don't know whether it was the United States Rubber
any or the Metropolitan National Bank.
It was one of the two?
One of the two.
Do you know the amount of the bid? Wasn't it $15,500?
$15,500, I think it was.
These two sales disposed of all the personal property in
ate of Illinois?
Yes, sir.
Beale: Tangible personal property?
Newman: Tangible personal property.
Witness: You do not include book accounts?
Newman: No.
What time were all the book accounts, bills receivable and
s of that kind transferred and delivered to the United States
r Company, on August 5th or August 6th, 1896?
August 6th.
What time of the day—when did you sign the paper?
Late in the afternoon, I think, sir.
Sure about that?
I do not remember the exact signing of those papers.
Were all the books, papers and documents of the com-
delivered to the United States Rubber Company or its
s on August 6, 1896?
All the books in active use.
All that have any value?
All that have any value.
And all those books, papers and documents so delivered
ned in the possession of the United States Rubber Com-
or its agents, until they were turned over to the receiver
s cause?
I suppose so; I don't know anything about it.
In the course of discussing the general situation in Janu-
1896, who was it that suggested that the rubber company
d have the secretary and the treasurer. Did that come from
r from the rubber company's side?
Probably from the rubber company's side.
During the same interview, did Mr. Beale say to you, as
ason for wanting the secretary and the treasurer, that a
ant of attorney to confess judgment would only be executed
he president and the secretary, and that, therefore, Mr.

Evidence taken before Master.

Testimony of Charles E. Fargo.

Beale insisted upon having control of the secretary, so that no judgment note or warrant of attorney could be executed without his knowledge and consent?

A. I think he did.

Q. And in that way they could prevent the Fargo Company or yourself from giving security to any other creditor without their consent?

A. Yes.

Direct Examination continued by Mr. Tenney.

Q. Mr. Fargo, these notes that the bank had before you gave them the judgment notes were the plain notes of your company as I understand it?

A. Yes, sir.

Q. Were they endorsed?

A. No; they were not.

Q. The firm had no security on them from you or any other officer of the company?

A. No, sir.

Q. Or anybody else?

A. No, sir.

Q. Had the bank before that, during 1896, had endorsements or guarantees from anyone on the paper of your company?

A. No, sir.

Q. The indebtedness of your company in the form of notes or bills payable was not entirely held by the bank; other creditors held your notes, did they?

A. Yes, sir.

Q. Were any of those notes during the early part of 1896 endorsed or guaranteed by you or any other member of the company?

A. I do not remember whether any were at that time or not. We borrowed some money in Boston on which we were endorsers.

Q. When was that?

A. During various years. If we had any money borrowed of brokers in Boston it was endorsed.

Q. By borrowed of brokers, you mean commercial paper sold—company's paper?

A. Yes.

Q. With whose endorsements?

A. Endorsements of my brothers or of myself.

Q. Did any of that paper come due after January 6, 1896?

I think there did.
It was all paid, was it?
Yes, sir.
Was it renewed or paid and taken up?
It was paid. No new notes excepting the bank notes ever renewed.
No notes excepting the bank notes were ever renewed?
No notes except those for the Metropolitan National Bank ever renewed.
Tenney: Oh, I thought you said endorsed.
Now, to what extent were notes taken up upon which you ur brothers were endorsers—taken up after January 6th?
I think $15,000.
When was that—what part of the year?
I think there was one in January and probably two in h.
Taken up after you got this money from the rubber com-s?
Yes, sir.
And after that there was no paper outstanding on which brothers were liable?
I think not.
You issued no more of the paper which you guaranteed came liable personally upon?
No, sir.
Now, from January, 1896, no one had judgment notes ist your company except the rubber companies, until you those two to the Metropolitan National Bank?
No, sir.
You and your brothers had been the active managers of usiness prior to January, 1896, had you not?
Yes, sir.

By Mr. Newman.

Did you ever tell Mr. Keith on August 5th or 6th that your ern was going on in business, after you made that convey-of buildings and real estate at Dixon to the bank?
I do not think I did.
Did not all the parties connected with the matter on August 1896, know that your company had given up the ghost?
I think they did.

Evidence taken before Master.

Testimony of Charles E. Fargo.

Q. The building to which we have so frequently refer Dixon, Illinois, is situated on this real estate, is it not?

A. It is all one; the building and land are one property is to say, they are all together.

Q. And that building and the land upon which the bu is situated is known as your boot and shoe factory at I Illinois?

A. Yes, sir.

Q. And was so known in August, 1896?

A. Yes, sir.

Q. And that was the only factory that C. H. Fargo & C anywhere?

A. Yes, sir.

Cross Examination by Mr. Beale.

Q. For about how many years prior to January, 189 your company been in existence and doing business, Mr. I

A. As a corporation, since December, 1889.

Q. '89?

A. 1889.

Q. There had been some changes in the interests—i holdings of stock, I mean, in that period, had there not?

A. Yes, sir.

Q. Who held the stock of the company in the latter p 1895 and January, 1896?

A. My brothers and myself.

Q. All of it?

A. All of it.

Q. The other four directors besides you three held no interest in the company at all?

A. No, sir.

Q. What had been the extent of the company's busi large or small?

A. In dollars and cents?

Q. Generally, a large business or a small business?

A. A large business.

Q. You conducted a business in the manufacture an sale of boots and shoes, as well as in the sale of rubber you not?

A. Yes, sir.

Q. You manufactured your boots and shoes at Dixon, Il

A. Yes, sir.

Q. Having a factory there?
A. Yes.
Q. Can you give some approximate idea, to the best of your present recollection, of the amount of the company's business for a few years preceding 1896?
A. It ran from $1,250,000 to $1,400,000.
Q. Per annum?
A. Per annum.
Q. What is your best recollection as to the extent of the business in 1895?
A. About $1,200,000 or $1,250,000, I should think. I do not remember exactly whether it is that, but very likely.
Q. What was the size of the premises you occupied on Quincy and Market streets?
A. 62 by 180 feet.
Q. How many stories had you?
A. Seven stories and basement, but we did not occupy it all.
Q. How much of it did you occupy?
A. We rented three floors.
Q. Three floors?
A. Three floors.
Q. What if any indication to the outside world was there that you were not occupying the whole of it?
A. There were signs of the different tenants on the exterior.
Q. They were sub-tenants of yours, were they not?
A. Sub-tenants of ours.
Q. Did you rent the whole of these three floors?
A. Yes, the whole of three floors.
Q. Out of the eight practically?
A. Out of the eight.
Q. So that your concern practically occupied five floors?
A. Yes; occupied five floors.
Q. For how many years prior to 1896 had your company been doing business with the two rubber companies, or—
A. All of twenty or more.
Q. You mean, when you speak of twenty, you mean the firm of the same name?
A. Yes, all the time of its existence.
Q. All the time of the company's existence?
A. All the time of the company's existence.
Q. Prior to the existence of the corporation there had been a firm known as C. H. Fargo & Co.?
A. Yes, sir.

Testimony of Charles E. Fargo.

Q. In other words, you expressed the idea that if you g through all right till then you would pull through all right?

A. Yes, sir.

Q. Why did you think if you got through until the 1st of M you would be all right rather than any other time than the 1st May?

A. Because every outlook then was such that the early spri trade was going to be a very good one that year.

Q. And from that time until the 1st of May it would be large a case of paying out money, wouldn't it?

A. Yes; paying out money; and we anticipated after that would be coming in in abundance.

Q. And there would not be relatively such a showing of r ceipts by your concern prior to the 1st of May?

A. No, not prior to the 1st of May.

Q. What was said by you as to the management of the bus ness in case this arrangement should be made about changi the directors—what were you to do about the actual manageme of the business?

Mr. Smith: Objected to as irrelevant and immaterial.

A. I objected to any interference in the business, and it wa stated that there should be none.

Q. It was a condition laid down by you in connection wi the matter then, was it not, that the new directors who were be placed in the board in case the arrangement was made we to have no more voice or control in the management of the affa than the four directors, employes of the company, whom th would supplant?

(Same objection.)

A. Yes, sir.

Q. The management was to be left in the hands of yours and your two brothers, who owned the stock?

A. Yes, sir.

Q. At that time the discussion had reference merely to fo directors, did it, or the word " majority " may have been used?

A. No; the word majority was used at first, and for so reason or other it was changed from four to five—I have forgott when.

Q. I will ask you about that in a moment, and my questio I think, will refresh your recollection. What, if anything, w said at that time to you by Mr. Johnson and Mr. Sadler, or m self, respecting the conduct of your business, and particula its being so conducted as to avoid increasing its liabilities, a

y reducing liabilities? Did we not impress upon you that e went into the arrangement the very best efforts must be le to reduce the indebtedness of the Fargo Company?

. Yes, sir.

. Was there at any time any suggestion made by anybody t an increase of its indebtedness was contemplated?

. Just the opposite.

. Just the opposite?

. Yes.

. Was there at any time any suggestion made by anybody t the proposed arrangement should be made for the purpose drawing in new creditors and getting additional assets for the nefit of the rubber companies?

. Oh, no.

. No such idea was broached by anybody, was there?

. No.

. In fact, all the suggestions were directly to the contrary?

. So much so, our salaries were cut in two.

. Immediately afterwards?

. From that time.

. Do you remember whether any suggestion was made at t time that you should apply to the Metropolitan National ank, either alone or jointly with the rubber companies, for a an?

. Yes, sir; it was spoken of.

. Who suggested that?

. I think Mr. Johnson asked the question.

. Mr. Johnson or I, one of us?

. Asked the question.

. Do you remember what your attitude was on that?

. I strongly objected to it.

. That was on account of the irritation that had grown up ith Mr. Keith?

. Yes, sir.

. On account of the demand for judgment notes in 1893?

. Yes, sir.

. And you were unwilling to have anything more to do with r. Keith than you were compelled to have?

. Yes, sir.

. In other words, we, meaning by that Mr. Johnson and rself, wanted you to go to the bank, didn't we, either alone jointly with ourselves, substantially as had been done in 1893?

Testimony of Charles E. Fargo.

A. I don't know that you wanted me to do that—the ma
came up as a suggestion.

Q. We appeared to want it, anyway—we suggested it, anyw

A. Possibly—yes, sir.

Q. When was the firm of C. H. Fargo & Co. organized—al
when?

A. 1871.

Q. Originally, the principal partner in it was your father,
it not—C. H. Fargo?

A. Yes, sir.

Q. When the corporation was organized your father was
living, was he not?

A. Yes, sir.

Q. And was he a stockholder and director and officer o
corporation?

A. Yes, sir.

Q. When did your father die?

A. In March, 1892.

Q. During his lifetime were there not five Fargos in
corporation?

A. I think not. I think that my brother Ed was not in
corporation at that time; but my father and my uncle, Mr. S
my brother Frank and myself.

Q. Samuel M. is your uncle?

A. Yes, sir.

Q. He was in the concern at one time?

A. Yes, sir; and went out in 1892.

Q. If the record book which has been introduced in evid
should show that there were five of them, and your brothe
was in the firm, what would you still say?

A. I speak from recollection.

Q. If the record so states, you would say the record was
rect?

A. Yes, sir; I do not remember just when my brother E
come in.

Q. There were then, in the lifetime of your father, as m
bers of the board, your father, your uncle, Samuel M. F
yourself and your brother Frank, and possibly your brothe

A. Yes, sir.

Q. The other two directors were taken from prominent
ployes, were they not?

A. Yes, sir.

Testimony of Charles E. Fargo.

Q. Do you recollect, Mr. Fargo, why the number of directors s fixed at seven instead of five?

A. I think the original by-laws were copied directly from some owed from some corporation, and that word seven was in- porated without any thought being given to it; I don't re mber about it.

Q. You do not remember that there was any idea in there of ing any of your principal men acquiring stock in the cor- ation?

A. I know that was thought of.

The Witness: That may have been the purpose, that so if they uired stock they might be in the board.

Q. At least two of them?

A. Yes, sir.

Q. On the death of your father you became president?

A. Yes, sir.

Q. From the time that you and your two brothers held all of stock you three were in the board of directors, were you not?

A. Yes, sir.

Q. And the other four directors were employes of the corpora- n?

A. Yes, sir.

Q. Have you known anything about he size of these two rub- r companies, or either of them, whether they are large or small ncerns?

A. I know they are both very large concerns; one of them ry large, much larger than the other.

Q. The United States Rubber Company is much the larger, is not?

A. Yes, sir.

Q. Do you know what its capital is?

A. I ought to, but I do not.

Q. Isn't it between—

A. $50,000,000, I think.

Q. It is in the neighborhood of fifty millions, is it not?

A. Yes, sir.

Q. At any time during the transactions between your com- ny and the United States Rubber Company prior to January, 96, was there any manifestation of distrust or want of confi- ence or withholding of credit by the rubber companies toward our company?

(Same objection; same ruling.)

A. No, sir.

Testimony of Charles E. Fargo.

Q. On the contrary, there were manifestations of ent
fidence, were there not?

A. Yes, sir.

Q. After the judgment notes to the bank and to the
companies in 1893 were given, were they all paid off,
some of them voluntarily surrendered and plain notes t
lieu of them?

A. The judgment notes to the bank of $115,000 were
tire; the notes to the rubber companies were paid to al
same amount, leaving about $75,000 unpaid, which th
rendered without giving any new judgment notes.

Q. Did the rubber companies voluntarily surrender t
ment notes?

A. After the payment of the last note to the bank, the
tarily surrendered and took plain notes.

Q. What did you say to Mr. Johnson during the
interviews about the collections of your corporation,
they were slow or not?

A. I do not remember.

Do you not remember stating there was great diffi
making collections at that time?

A. I remember that there was a great difficulty.

Q. And you may have said so?

A. I may have said so.

Q. Do you not recollect that that was stated by you
of the special reasons of your actual or probable embarra
that there was difficulty in making prompt collections?

A. I did make such a statement; yes, sir.

Q. Do you remember whether you stated at some one
of those interviews that the assets of the Fargo Compan
best of your judgment, were somewhere between $500
$550,000?

A. I do not remember what I stated now; I cann
those figures.

Q. Do you remember whether that amount was menti

A. I do not remember what amounts were mentione
them on paper and gave them to Mr. Johnson.

Q. You would not say that that amount was not me
however, would you?

A. I would not say that any amount was or was n
tioned; I have forgotten the exact amount; I would no
make a statement as to the figures named.

Q. But in accordance with your understanding of th

the corporation at that time, would it not have been entirely
asonable for you to have said the assets were between $500,000
d $550,000?

A. I think I should have stated they were fully that much.

Q. It is your recollection, is it not, that you did not state
ally to Mr. Johnson that you were going to treat everybody
ike, but that your statement was, substantially, you saw no
ason, then, why they were entitled to special consideration?
ther people were not discussed particularly?

A. I do not think I made any statement to Mr. Johnson
bout what we would do with other people. I do not think I
ade any statement as to what we would do or would not do.

Q. Mr. Johnson requested some judgment notes at that time
ally irrespective of whether your company would pull through
r not?

A. Yes, sir.

Q. And you declined to give them?

A. Yes, sir.

Mr. Beale: This is all about January.

Q. Finally Mr. Johnson stated, in substance, did he not, that
I could see my way clear to protecting his companies com-
letely he would cause the Fargo Company to be helped with
0,000 on the conditions that were mentioned?

A. Yes, sir.

Q. Mr. Fargo, wasn't it suggested at one time that the board
f directors should be changed without giving the judgment note,
o that in case of trouble judgment notes could be given at the
ime of the failure?

A. I think it was.

Q. Do you remember I objected to that and said there might
e difficulty if the directors selected by me were to vote in
avor of judgment notes?

A. I know that was discussed.

Q. Do you remember when Mr. Johnson left here and went
ack to New York?

A. In January?

Q. Yes: at that time?

A. He went back before the final consummation of this
leal.

Q. As a matter of fact he had advanced you $10,000 before
he papers were closed up, hadn't he?

A. Yes, sir.

Q. He advanced $10,000 and went off?

Testimony of Charles E. Fargo.

A. Yes, sir.

Q. Leaving the matter to be closed up as I might arr

A. Yes, sir.

Q. The details of the arrangement were then agr between you and me, were they not?

A. Yes, sir.

Q. Largely in conference at my office?

A. Yes, sir.

Q. Do you remember whether I suggested to you tha the possibility that some one of the majority of the might die, I thought there ought to be five in there in four who might be nominated by the rubber compani their behalf?

A I remember of some suggestion which was mad instead of four; possibly it was on account of or by death, or something of that sort.

Q. And it was my suggestion also, was it not, that one directors ought to be made secretary and treasurer, o those two offices ought not to be held by you or your bro

A. I think it was.

Q. Did the rubber companies have any interest of ow direct or indirect, legal or equitable, in your concern?

(Objected to.)

A. No, sir.

Q. Did they have any stock interest or claims to a you know of?

A. No, sir.

Q. They had no interest in it whatever, did they?

A. No, sir.

Q. What was the arrangement, if you can recall it d made at the time of Mr. Johnson's leaving for New Yo whether these directors should be named or picked out?

A. It was left entirely to you.

Q. I was to find some men whom I would have confid

A. Yes, sir.

Q. To see that we carried out the arrangement?

A. Yes, sir.

Q. The purpose of which, as I understand you, w they should go in there solely for the purpose of seeing arrangement as stated by you was carried out.

(Objected to.)

A. Yes, sir.

Q. And otherwise they were not to interfere in the actual affairs of the business?

A. Yes, sir.

Q. Do you remember what was said about the management of the finances of the concern, that I suggested having one of these proposed directors serve as treasurer? What was said about one of your brothers acting as assistant treasurer, so that he could actually do the business?

(Objected to.)

A. I do not remember about what was said about it.

Q. But it was a verbal arrangement between you and me, was it not, that Buell McKeever, who was subsequently made treasurer, should not personally attend to the details of the treasuryship?

(Same objection; same ruling.)

A. Yes, sir.

Q. That one or the other of your brothers should continue to perform the duties of treasurer thereafter as he did theretofore?

(Same objection; same ruling.)

A. Yes, sir.

Q. He had previously been treasurer, had he not?

A. Yes, sir.

Q. Which one was that?

A. F. M.

Q. We made some attempt, did we not, you and Mr. Cratty and myself, to formulate a written agreement?

A. Yes, sir.

Q. Who wanted that written agreement?

A. I think I did.

Q. You were particularly desirous of having a written agreement formulated which would specify with the utmost plainness and accuracy just when we should be entitled to enter up judgment on the judgment notes?

A. Yes, sir; I did.

Q. To protect your company against the rubber companies?

A. Yes.

Q. We found some difficulty, didn't we, in enumerating the exact contingencies when they should be authorized to enter judgment?

A. Yes, sir.

Q. And finally the idea of drafting any written agreement was abandoned?

Testimony of Charles E. Fargo.

cross-examination; and if anything, it is a declaration made o of our hearing, in our absence, and cannot in any way bind u We have asked the witness nothing about the financial condit of the Fargo Company.

Mr. Beale: But you asked him about the interviews—y went into the general subject.

Mr. Newman: We asked him specifically. His belief or t expression of belief does not change the facts.

Mr. Beale: As bearing on the question of good faith, that ma be very important—bearing on the question of our good faith.

The Master: He can answer it subject to the objection.

A. Yes, sir.

Q. What did you say on that subject so far as you recollect?

(Same objection and same ruling.)

Mr. Beale: I am perfectly willing to make a general agre ment that any testimony we take here shall go in subject to o jection before the court upon it—a general objection to its co petency and materiality.

A. I said that I thought we could just as readily get throu with the help I ask as we did in 1893.

Q. Did you at that time state whether or not you believ that the company was solvent?

(Same objection and same ruling.)

A. I did.

Q. What did you say on that subject.

(Same objection, and same ruling.)

A. That I thought we were solvent.

Q. You stated, did you not, your belief, that the compa had ample assets to pay all its liabilities in due course business?

(Same objection, and same ruling.)

A. I did.

Q. Were not some figures produced by you, Mr. Fargo, that time?

A. Yes, sir.

Q. Figures showing the assets and liabilities of the corpo tion?

A. Yes, sir.

Q. Including the accounts due the company?

A. Yes, sir.

Q. As a matter of fact, Mr. Fargo, you continued to belie the company solvent, did you not, down to about August, down to about the time of the failure?

Testimony of Charles E. Fargo.

ame objection, and same ruling.)

Yes, sir.

When the assets of the company in the store were sold at al's sale, what was your position expressed at that time the proceeds of the sale as to whether the property had ht all it was worth, or whether that was a much smaller nt than was expected?

ame objection, and same ruling.)

Beale: It is only fair to say, for the master's information, seeking to bring out by fair questions what I believe to been the witness' view of their condition, that he honestly stimated the assets in his own mind and was greatly sur l when the assets turned out to be so small as they were, own to the actual disposal of the assets in the market and llection of the accounts, he expected the assets of the firm elieved the assets of the corporation, I mean, were much than they really have since been proven. That is what I eeking for, and I think it is a fair examination to show urposes in it.

e Master: Same ruling.

I thought the stock of goods brought much less than it ld.

The amount you originally asked Mr. Johnson to advance use to be advanced was $25,000, was it not?

Yes, sir.

Did you not state to him in substance that you—your pany—were of the conviction that if that amount, or about amount, were advanced, the company would get on its and pull through its embarrassments?

Yes, sir.

I think you testified that Mr. Johnson was adverse to ng the advance made?

Yes, sir.

Did he at any time flatly say that he would not do it?

I do not think he did.

Did he at any time demand that your company should him a preference as the matter then stood?

No; I do not think he did that.

Substantially, what Mr. Johnson did in respect to re- sting a preference was to argue, did he not, that by reason of occurrence in 1893 and his considerate attitude then, the ber companies were fairly entitled to special consideration n your company?

Testimony of Charles E. Fargo.

A. Yes, sir.

Q. And that is about as far as he went, isn't it?

A. Yes, sir.

Q. Did he not say in substance that the general financ conditions of the country were unfavorable for making such a vances?

A. He said he did not know whether he would be able it or not.

Q. Wasn't there more or less discussion about the precari financial condition of affairs over the country?

A. Yes, sir.

Q. And did he not speak of the fact that the interests of company were widely spread over the country?

A. Yes, sir.

Q. Not confined to Chicago or New York?

A. No.

Q. They were doing business all over the country, were th not?

A. Yes, sir.

Q. Both the rubber companies?

A. Yes, sir.

Q. Do you remember whether or not Mr. Johnson said dur the course of the interviews that if it was a question really failure or no failure that he would rather lose $25,000 than have you fail?

(Same objection and same ruling.)

A. Yes, sir; he did.

Q. Do you remember his saying that in such a critical fina cial condition, the failure of one concern was liable to preci tate other failures, and that houses went down like a row bricks sometimes from lack of confidence?

A. I do not remember his saying that especially.

Q. Do you remember any such thing as that being said, an thing of that general tenor being said at any of the interviews?

A. No; I don't think I do.

Q. Well, he may have said that to you?

A. I don't remember it.

Q. Did he not state as two special reasons why he sho prefer to have his companies lose $25,000 rather than have y company fail, that, in the first place he wanted your compa to succeed, pull out of its temporary embarrassments, and in t next place he did not want to see any such failure of a la

cern at that particular juncture; were not these two of the ons named by him?

A. I do not remember his making any generality of that kind. not remember his bringing in any other concern. He always ressed the greatest desire to have us get along in every way.

Q. Do you not remember his giving any specific reason con- ted with the general situation?

A. No, sir; I do not.

Q. As a matter of fact the beginning of a new year is always rticularly trying time for business establishments, isn't it?

A. Yes, sir.

Q. Any weakness is likely to be developed there at that iod of the year more than any other period?

A. It was especially so, I know.

Q. Generally so considered, is it not?

A. I think it is.

Q. The interviews relating to this arrangement which was ally consummated in January, 1896, were quite numerous, d quite protracted, were they not?

A. Yes, sir.

Q. To a considerable extent, they related to the condition of ur company, did they not?

A. Yes, sir.

Q. And after that to the question whether some absolutely ie method could be devised of protecting the rubber companies case an advance should be made?

A. Yes, sir.

Q. There was some discussion, some little discussion of a hattel mortgage, or mention of that subject, was there not?

A. I do not remember; I think there was some mention about chattel mortgage.

Q. Isn't it possible I may have said at these interviews that hat method could not be adopted; that it was impracticable?

A. I don't remember so much about that; I don't remember— remember that it was brought up here; that a chattel mortgage as spoken of.

Q. At that time?

A. At that time.

Q. Was not the purpose of the arrangement in January to help our company get over the temporary embarrassment?

(Same objection; same ruling.)

A. Yes.

Q. That was the sole purpose, was it not?

Testimony of Charles E. Fargo.

(Same objection; same ruling.)

A. Yes, sir.

Q. Do you not recollect that I made a remark during the in terviews that the execution of a chattel mortgage and the recor ing of it would defeat your purpose?

(Same objection and same ruling.)

A. I know that came up; that part of it came up, in regard t a chattel mortgage; I do not know whether you made that re mark or whether it was made by another.

Q. That statement was made that it would defeat your pur pose, at that interview?

A. Yes.

Q. That remark was made by somebody there?

A. Yes, sir.

Q. Do you remember who first suggested the substance o the arrangement that was ultimately carried out?

A. I think you did.

Mr. Beale: Refresh your recollection a little and see if yo cannot recollect that you made the suggestion.

Q. Let me ask you if you cannot recollect that you were sit ting on the inner side of the room, away from the Michigan ave nue side, with your head in about the attitude you are now in and you suddenly looked up and asked: "How would it do fo the company to put in a majority of directors upon whom the rubber company could rely to see that no security was given t some one else?"

A. I do not remember that.

Q. During the interviews and prior to any actual agreement Mr. Johnson had practically preserved a non-committal positio had he not, and the legal questions had been very largely dis cussed?

A. Yes, sir.

Q. And wasn't it true that I had repeatedly made the sug gestion that the trouble with accepting judgment notes would b that you could immediately give judgment notes to somebod else if you wanted to?

A. Yes; I know that came up.

Q. Do you remember my observing that while we had entir faith in you at the time, you might after some period find your self in pressing need of a little more money and believing that you could pull through with that additional money, that you might be tempted to give judgment notes to somebody else in order to get it?

Yes, sir.
That suggestion was made by me, was it not?
I know that suggestion came up and was probably made
ou.
And finally, to prevent the possibility of that, the idea
presented by some one of making the changes in the board
irectors?
Yes, sir.
So that you could not absolutely control the majority of
n?
Yes, sir.
And finally, about the 4th or 5th of January, one inter-
terminated, did it not, Mr. Fargo, with the suggestion that
and your brothers should carefully consider the matter dur-
the night, and the next morning be able to tell us at our
interview, on the following day, positively just how much
ney you could get along with and how much would pull you
ugh, that you would let us know definitely on the next day?
Yes, sir.
And we would give further consideration to the subject?
Yes, sir.
On the next day you reported to us, did you not, that you
come to the conclusion that to be absolutely safe for the
t few months you would probably need $50,000?
A. I remember of coming to that conclusion.
Q. And it was stated in about the way I have stated it by
question, wasn't it?
A. Very nearly.
Q. And did you not state in substance at that time that you
with the $50,000 you would be able to pull through all right?
A. I did state that.
Q. You had some limited period, did you not, during which
ese embarrassments were going to continue?
A. Yes, sir.
Q. It was not an indefinite arrangement?
A. No, sir.
Q. Do you remember the time which you fixed, or which you
entioned there as being the time when you expected to pull out
these embarrassments?
A. By the 1st of May.
Q. The 1st of May following?
A. Yes, sir.

Testimony of Charles E. Fargo.

Q. In this respect, Mr. Fargo, how did the action of the boa of directors differ from what had been the previous practice How actively had the board of directors been engaged in ma aging the affairs of the company, holding meetings, and so forth

A. The affairs of the company were managed simply by co sultation of the three owners.

Q. The board of directors as a board was practically very litt consulted?

A. Yes, sir; very little.

Q. And did not hold many formal meetings?

A. Very few.

Q. And in that respect matters were not different in Januar 1896, were they, from what they had been before?

A. No, sir.

Q. Were the $50,000 actually advanced by the two rubb companies?

A. Yes, sir.

Q. At the time these judgment notes were given, there wa considerable indebtedness due from the Fargo Company to th rubber companies, was there not?

A. Yes, sir.

Q. Part of that was upon open account, was it not—the i debtedness to the United States Rubber Company?

A. Yes, part of it was on open account.

Q. The indebtedness to L. Candee & Company was repr sented by notes, was it not?

A. Yes, sir.

Q. In your affidavit filed in this case you have stated th amount of the notes to the L. Candee Company as $44,900; that correct, as you now remember?

A. I suppose it to be correct—I gave the correct amount i know it; I did know it at that time.

Q. And so far as you now know that was the correct amou

A. Yes, sir.

Q. And at that time, in January, 1896, then—January 6, 18 there were outstanding notes to the amount of $44,900, whi were bona fide notes that Fargo & Co. had given to L. Cand & Company?

A. Yes, sir.

Q. Were there any notes given at that time outstanding the United States Rubber Company?

A. I think there were—I do not remember whether there w or not; my recollection now is that there were.

Q. Between January 6 and August 6, 1896, was there any ew indebtedness created to L. Candee & Company by Fargo & ?

A. Very little.

Q. Well, do you mean when you say a very little, or if any, it s very little? Do you remember that you really incurred any debtedness at all to L. Candee & Company?

A. None to L. Candee & Company.

Q. None to L. Candee & Company?

A. No, sir.

Q. There were no new transactions with that company after anuary 6th?

A. No, sir.

Q. And the only dealings with that company consisted in aying something on the indebtedness then existing, and on he advance made? That is all you had to do with L. Candee & ompany?

A. That is all we had to do with L. Candee & Company.

Mr. Beale: I wish you would refresh your recollection, Mr. argo, so you will be able to testify at our next sitting as to the mount of the indebtedness to the United States Rubber Comany, January 6, 1896; to subsequent dealings in connection ith the United States Rubber Company between that time and ugust 6th; and to what the indebtedness to the two companies as on August 6th. Let me say that you have one of those rinted records which you know about, verified at the time, ay be sufficient to refresh your recollection. The amount of he indebtedness here is stated.

The Witness: Where can I find that?

Mr. Beale: In the books at our own office; I think the books orrectly show that; I have no doubt they do.

Q. Your books of account show with substantial accuracy he transactions between the Fargo Company and the two rubber companies, do they not?

A. Yes, sir.

Q. In your affidavit here it is stated that on January 6, 1896, he indebtedness of the Fargo Company to the United States Rubber Company on that date was about $135,000; is it your present understanding that that was correct?

A. I knew at the time, of course, exactly the amount, and if it is stated there in the affidavit that would be the amount.

Q. This is correct; you verified the figures before making the affidavit?

Testimony of Charles E. Fargo.

A. Yes, sir.

Q. So at that time there was about $35,000 due the U States Rubber Company upon—it is stated here it was up open account?

A. I do not remember whether it was all open accou part of it notes.

Mr. Beale: I think nothing is said about notes to the U States Rubber Company; I do not catch it here, anyway.

Q. This was all genuine bona fide indebtedness, actual isting?

A. Yes, sir.

Q. So far as the United States Rubber Company is conc existed directly to that company?

A. Yes, sir.

Q. And is it true that L. Candee & Company may hav counted some of these notes?

A. I presume they did.

Q. Was there any understanding between you and Mr. son as to what was to be done with those discounted notes?

A. They were to be paid as they matured.

Q. And they were paid, were they?

A. Yes, sir.

Mr. Newman: By your company?

The Witness: By our company.

Q. They were paid by your own check?

A. I cannot tell you whether by our own check or New drafts. I think by our own check.

Q. Let's see; at the time of the failure of the Fargo Com the Fargo Company is stated by you in the affidavit to been indebted to L. Candee & Company for $36,530; was amount correct?

A. I presume it is.

Q. You believed it to be so at the time, and have se reason to believe it was erroneous?

A. Yes, sir.

Q. What was that indebtedness for? How did it arise, had these other notes? Was this a part of the advance of 000?

A. No, sir. I don't know what that indebtedness was; I exactly know.

Q. Your company was indebted to L. Candee & Com about $44,000 on January 6th, and on August 6th, $36,532 is here?

A. I presume that is a portion of the $50,000; I don't know what that means; I do not recollect what that means.

Q. Do you remember whether or not all of the notes previously given to L. Candee & Company, and which were outstanding January 6th, had been paid before August 6th?

A. There were notes to the L. Candee Company and to the United States Rubber Company, too, if I remember correctly, though it may have all been to L. Candee & Company, that matured in March, and April, I think, that were paid; and which of these amounts are referred to there I do not remember. As you speak of it there, $44,000 and something, it seems to me are the notes—I do not know what these notes are anyway; they were notes to the Candee Company.

Q. To recapitulate it briefly, to refresh your recollection, in January, according to your affidavit, your company owed L. Candee & Company $44,900, and the United States Rubber Company about $135,000; by August 6th—

The Witness: Let me see, $135,000 and $44,000.

Mr. Beale: Yes; $44,900.

Q. (Continuing) By August 6th, or meantime, you had received $50,000 from the two companies?

A. That made $230,000.

Q. That is correct, is it?

A. That is correct?

Q. By August 6th, the indebtedness to the Candee Company stood, according to your affidavit, at $36,530, and the indebtedness to the United States Rubber Company, $140,671, say, roughly speaking, $177,000?

A. And had been reduced from $230,000 to $177,000.

Q. In January it was $180,000 outside of the advance; is that your recollection of the aggregate of the figures?

A. Yes, sir.

Q. And that it was about $177,000 to the two companies at the time of the failure?

A. Yes, sir.

Q. That was a bona fide existing indebtedness, was it?

A. Yes, sir.

Q. You stated a few moments ago that you recollected the notes held by L. Candee & Company prior to January 6th were paid from time to time as they matured?

A. Yes, sir.

Q. How did they come back to you—from banks, or L. Candee Company as paid—to whom did you pay them?

Testimony of Charles E. Fargo.

A. We paid them by direct remittance to L. Candee
pany.

Q. Paid them invariably to L. Candee & Company?

A. Invariably to L. Candee & Company.

Q. And so far as you know they took care of the not

A. That is all the record we have; we did not see w
did with the notes?

Q. You never paid any attention to what they did
notes?

A. We never paid any attenion to what they did
notes, except to look at the endorsements when they ca

Q. But in paying them, you treated them as still sta
L. Candee & Company in every instance?

A. In every instance.

Q. And the same way with the United States Rubl
pany?

A. The same way with the United States Rubber
unless there was a note which was payable at such an
bank; they sometimes asked us to make them payable
bank.

Q. Both before that and afterwards?

A. Yes, sir.

Q. But you treated them as payable to the Unite
Rubber Company?

A. Yes, sir.

Q. And made remittances to the rubber company?

A. Just the same all the time.

Q. Let me ask you one general question. Mr. Far
matter of fact, the arrangement was carried out as it wa
was it not, and as it was contemplated?

A. By both parties?

Q. Yes?

A. Yes, sir.

Q. In connection with that arrangement, I think you
that both Mr. Johnson and I repeatedly impressed upon
propriety of decreasing the indebtedness of the Fargo C
did we not?

A. Yes, sir.

Q. That is the fact, that we did?

A. Yes, sir.

Q. In other words, we were impressing conservatis
you in the management of its affairs?

A. Yes, sir.

Complainant's Evidence—Testimony.

Testimony of Charles E. Fargo.

Q. Can you remember whether you ever mentioned to Mr ...nson, or to me, and if so, when, the increase in the size of ...r factory at Dixon?

A. I do not know that it was mentioned to you at all.

Q. To either of us?

A. Either of you.

Q. You cannot recollect that you ever told either of us about ...

A. No.

Q. You cannot recollect at this moment?

A. I do not remember to have ever spoken to you about it at ...

Q. You have no reason at all to suppose now that either of ... knew anything about it?

A. No.

Q. Was that a practical doubling of your facilities?

A. No; it was not quite one-third, perhaps a quarter larger.

Q. It is alleged in the bill of complaint, Mr. Fargo, that after ...uary 6th the business of your company was carried on, not ... the benefit of your company, but for the benefit of the rubber ...panies. Is that true?

Mr. Newman: Objected to on the ground that it is not cross-...amination, and also as calling for the witness' mental con-...usion.

A. No.

Q. How far, if at all, was the business of your company after ...uary 6th carried on with an eye to the benefit of the rubber ...panies?

Mr. Newman: Objected to on the ground that it is not cross-...amination, and calls for a general conclusion.

A. Not at all.

Q. Was not your business carried on after January 6th sub-...antially as it had been before, and solely for the benefit of ...rgo & Co.?

Mr. Newman: Objected to on the ground that it is not cross-...amination and calls for the conclusion of the witness.

A. Yes, sir.

Q. What was the approximate cost of that extension and in-...dentally of the machinery for it, and so forth?

A. The machinery extension was nothing, as I remember it. ...he building cost about $7,000.

Q. That would cover the whole cost of the extension?

Testimony of Charles E. Fargo.

A. That would cover the whole cost of the extensio
member it.

Mr. Beale: Right here, for the protection of the
want to say that a mechanic's lien decree was ente
Circuit Court of Lee County at Dixon, against the rea
C. H. Fargo & Co., real estate there. The property was
the decree in that case. In that case, also, I think
was set up that a certain part of that property wa
under the subscription—I have forgotten the details of t
but there was a claim in there that a certain portion of
erty would go back to the citizens if the business stopp
a certain time.

Q. Is that about right, Mr. Fargo?

A. There was a portion to be paid back if the pro
not run for a certain length of time.

Stipulation re non-redemption of Dixon property.

*It is the concensus of opinion of all parties in inte
is stipulated that the receiver is under no obligations
from the sale of the Dixon plant and property, or to
steps with reference to the subject.*

Mr. Newman: Let the records show that we shall i
the bank purchased the Dixon property, thereby can
wiped out $25,000 of any indebtedness which it may
against the Fargo Company.

Q. When you and I were discussing the provisio
written agreement which you wished, setting up the
ment between the rubber companies and the Fargo Co
you remember whether there was any discussion abo
cellation of the arrangement by a certain time, provi
concern should get beyond its present embarrassment?

A. There was talk of such a thing.

Q. What date was mentioned?

A. I do not remember.

Q. Well, wasn't it about July that you thought y
surely be in such shape—about July 1st—that the c
could afford to surrender their judgment notes? It was
during the summer, wasn't it, Mr. Fargo?

A. It was sometime during the summer or early fall,
discussed.

Q. And one of the conditions you wanted incorporat
agreement was that if the company had been restored to
good footing by the summer or early fall, then you sho
the judgment notes surrendered, wasn't it?

Mr. Newman: Objected to as not cross-examination

mission of counsel it relates to a matter that was never consummated or acted on.

A. Yes, sir.

Q. That condition was really abandoned as an express condition, was it not? That is, there was no special agreement to that effect, was there, anyway?

A. There was no agreement, no.

Q. But you nevertheless had in your mind, had you not, that the company's affairs did get into a sufficiently good condition, that Mr. Johnson would surrender the judgment notes or direct me to?

Mr. Newman: Objected to as not cross-examination, as irrelevant and immaterial, and as relating to a matter that was never consummated or acted upon by the parties, or intended to be.

A. Yes, sir.

Q. Do you remember, Mr Fargo, coming into my office and telling me some time in May or June that your company's affairs were turning out remarkably well, and you thought Mr. Johnson might soon to be willing to surrender the judgment notes?

Mr. Newman: Objected to as not cross-examination and as a matter that occurred long after January, 1896, and not in the presence of the complainant.

A. Yes, sir.

Q. What did you say to me at that time—about what did you say to me, as near as you can recollect it?

(Same objection.)

A. I think I mentioned the amount of the indebtedness that had been paid, and mentioned the condition of business. I do not remember what I did say exactly.

Q. The conversation came up incidentally, didn't it?

A. Yes.

Q. You came in about a fishing trip?

A. Yes.

Q. You and I are members of a shooting and fishing club in Northern Wisconsin?

A. Yes, sir.

Q. And both of us had been members of it for years?

A. Yes, sir.

Q. And this was in the trout fishing season, in the spring, and you came in, did you not, in reference to a fishing trip?

A. Yes, sir.

Testimony of Charles E. Fargo.

A. It was left entirely open, without any conditions at all just left in your hands.

Q. Do you remember whether or not, whether at one conversation between you and me, you said, substantially, that Johnson had confidence in you and you had full confidence Johnson?

A. I do so.

Q. And you would not insist upon a written agreement?

A. Yes, sir.

Q. The only thing you were afraid of something might come up while Mr. Johnson was in Europe, and some other office might not be fair to you?

A. I know I had that in mind.

Q. And you expressed it, didn't you?

A. And I expressed it.

Q. At first you sought to protect your company against the entry of any judgments by the mere caprice of the rubber companies?

A. Yes, sir.

Q. And you and I had some rather lively discussions over didn't we, because of the difficulty of formulating the agreement

A. Yes; they got to be so voluminous that they were of account.

Q. Do you remember from whom the first suggestion came that the five directors should be taken from my office, or people in close relations with me?

A. I think it came from you.

Q. You came to my office and made a suggestion, did you not?

A. I know certain people were discussed and I objected did not see any reason why they should not be just as well your office as somewhere else.

Q. Was Mr. E. M. Phelps suggested at that time as a director? Do you remember whether there was any mention of his name by me?

A. I don't think there was.

Q. But primarily, you objected to having people who might be connected with your competitiors?

A. Yes; I think one was Mr. Allen, and I think I objected him because he was around among the shoe houses all the time

Q. Do you remember whether you said to me that you were afraid that if some people were taken "on the street," as you

d it, they would be running in there and they would
lking?
es; I expressed that.
nd you felt that it would do you a great deal of harm?
es, sir.
ou said to me that it would be an unjust harm to your
ition and real credit, that it would tend to exaggerate
barrassments?
do not remember exactly what I expressed, but anyway
t want any outside parties that were connected with the
siness at all to be connected with it.
t that time you believed, did you not, Mr. Fargo, that
e $50,000 you were going to pull through all right?
me objection; same ruling.)
es, sir; I did.
ou felt that if outside parties connected with the shoe
s were put in there as directors, it would tend to put an
y bad coloring upon your affairs?
es, sir.
And would produce a discredit to which you thought you
t entitled?
es, sir.
Do you remember during the course of this discussion
aying to me in connection with that interview, discussing
street the credit of a commercial house was about like
sing a woman's character?
I did not say that, but I know where it did come from.
Who said it?
Tom Cratty said it.
That remark was made?
Yes.
Do you remember whether I first was rather unwilling to
hem from my office? Whether I hesitated about it?
You may have hesitated about it. I don't remember about
hase of it.
I did not refuse to do it, but finally assented to it?
Yes.
As you understood the arrangement, and as the arrange-
was discussed, when Mr. Johnson was here, and after Mr.
son went away, the sole purpose of it, Mr. Fargo, of chang-
e directors was to have people in there in whom we would
absolute confidence under all circumstances, wasn't it, that
would carry out the arrangement as made?

Testimony of Charles E. Fargo.

A. Yes, sir.

Q. Do you remember my questioning you as to how y notes you had previously given had been signed, as to whet you had signed them as president or you and the treasu together?

A. Yes, sir.

Q. And you stated to me, then, did you not, that your no had been signed by the president alone—the plain notes?

A. Yes, sir.

Q. As a matter of fact, the company for years had been the habit of giving notes, had it not?

A. Yes, sir.

Q. Had given large numbers of them?

A. Yes, sir.

Q. Long before it became embarrassed in business even?

A. Yes, sir.

Q. It was my suggestion, was it not, that the by-law wh has been referred to here was suggested to prohibit the ex tion of judgment notes without the express authority of board of directors?

A. I have forgotten about the by-law, but that would come from me.

Q. Can you recollect in connection with that, I said that had previously given judgment notes to the Metropolitan Nati Bank, and that because of that one giving of judgment not did not want to take the risk of the establishment of any cus in that?

A. I have forgotten about that.

Q. That the Metropolitan Bank might be justified in taki judgment note from you without having a formal resolu shown to it by the board or directors?

A. I had forgotten about the discussion of that at all.

Q. Do you remember whether you finally told me to draw the papers as I wanted them, and the notes, and to have meeting held and the steps taken as I wanted them?

A. The judgment notes?

Q. Yes. You subsequently gave me the general direct to go ahead and prepare papers as I wanted them done?

A. Yes, sir; I did that.

Q. The minutes of various meetings of the board of direc and meetings of the stockholders also have been shown h and I ask you, Mr. Fargo, whether it is not the fact that th records show the proceedings as they occurred?

A. To the best of my knowledge they do it; yes, sir.
Q. And that was your understanding at the time, was it not?
A. Yes, sir.
Q. The proceedings took place precisely as shown by the utes?
A. Yes, sir.
Q. And do the recitals in those proceedings as to the agree- t also correctly state the agreement?
Mr. Newman: Objected to on the ground that the records must ak for themselves; also on the ground that it is not cross- mination.
Q. (Continuing.) The first meeting to which I refer is one ded as held January 6, 1896, at which a resolution was ed reciting the indebtedness of the Fargo Company to the er companies, reciting a willingness of Mr. Johnson to cause advances to be made, and some of the terms and conditions er which the advances were to be made, not, however, men ing the change in the number of directors; now, so far as state at all—as it states them at all, does this resolution rectly set forth the agreement?
Mr. Newman: Objected to on the grounds hereby stated.
A. I think it does.
Q. It was not your understanding at the time, was it, that re was any falsification of the facts in the resolutions, was re?
(Objected to.)
A. No, sir.
Q. You signed the minutes of that meeting, did you not?
A. I did.
Q. And as you understood it at the time and understand it w, the minutes and resolutions there offered correctly set th the facts as far as they went?
(Objected to on the same ground.)
A. Yes, sir.
Q. Were the persons whose signatures appear attached to ese minutes present at that meeting?
A. I know those signatures.
Q. Do you know whether they were present?
A. Yes, sir; they were present.
Q. And these are the signatures of the persons whose signa res they purport to be, are they?
A. Yes, sir.
Q. Had there been any change in the board of directors at

Testimony of Charles E. Fargo.

that time, as proposed between you and Mr. Johnson and m self? This is January 6, 1896.

Mr. Newman: Objected to on the ground that the reco speak for themselves.

A. They were the directors there; no, there had not been a changes there at the time that was done.

Q. At that time, January 6th, there had been no change?

A. No.

Q. The other two directors were Byrnes and Dietrich?

A. Yes, sir.

Q. Do you remember where they were?

A. Mr. Byrnes was traveling on the road, and I think M Dietrich was also traveling on the road. Both were travel salesmen.

Q. And they were off at some distance?

A. They were not in Chicago.

Q. Were they both traveling salesmen?

A. They were both traveling salesmen.

Q. And not even in the State of Illinois, were they?

A. Mr. Byrnes was in Minnesota, at least that was his ter tory, and Dietrich was probably in Wisconsin.

Q. The next meeting recorded is a meeting of the stockholde held on January 8, 1896, at which there appeared to have be present yourself and two brothers owning all the stock—is th a correct record?

A. Yes, sir.

Q. These are the signatures of yourself and your brothe are they?

A. Yes, sir.

Q. The next meeting is an annual stockholders' meeti January 9th; is the record shown in the book of that meetin correct record of the meeting?

(Same objection.)

A. Yes, sir.

Q. Yourself and your brothers were present, and these are t signatures of yourself and your brothers?

A. Yes, sir.

Q. Prior to that date had anybody in my office or anyb connected with the rubber companies had anything to do w your company excepting as I had been advising and confer with you?

A. No, sir.

Q. The next meeting was a meeting of the directors held nuary 9th, at which officers were elected, held at my office?

A. Yes, sir.

Q. Is that your signature attached to these minutes?

A. No; my signature is not here.

Mr. Beale: Oh, that is so, the secretary's; you did not sign at at all.

Q. I will ask you then to look that over and tell to the best of ur recollection, that is, if these minutes correctly state the ceedings.

(Same objection.)

A. I should have to say that I did not—I do not remember—ould have to go by the record entirely.

Q. You have no independent recollection?

A. I have no independent recollection outside of what I re.

Q. Have you any independent recollection that that is in any ay incorrect?

A. No, sir.

Q. No more than you have any recollection the other way?

A. I have no recollection of it except as I see it there. I would ot remember it at all except by seeing it there.

Mr. Newman: That remark is true of all the minutes?

The Witness: Oh, no; I remember some of them.

Q. Do you know whether Frederick B. Fuller is at present iving or not?

A. No, sir; I do not.

Q. From the time these meetings were held and the arrangements in respect to this advance were made and consummated, what part, if any, did any of the people connected with my office, including Mr. Blake, who was assistant corporation counsel, take in the management of the affairs of your company?

A. None whatever.

Q. Did they actually interfere with it, or investigate it, or even come to your store in any way?

A. They were never in our store, any of them, in any way that I know of.

Q. And you never consulted them about business?

A. No, sir.

Q. Practically, they sat on the safety valve; that is what it amounted to, wasn't it, so far as protection to the rubber company was concerned?

A. Yes, sir; that is all it was.

Testimony of Charles E. Fargo.

Q. But there was something said about preferring the Dixon banks?

A. I think there was.

Q. About giving judgment notes to the Dixon banks, but you do not recall the details; is that it?

A. I have forgotten all about it.

Q. Mr. Sadler expressed himself as satisfied to allow you to obtain the additional $10,000, and to give judgment notes to the Metropolitan National Bank ultimately, didn't he?

A. Yes, sir.

Q. Was that while he was here or while he was in New York or both?

A. Both.

Q. Had you then in any way said to him, or indicated to him that you were on the verge of failure and that there would be a failure, and that the judgment notes were to accompany a failure?

A. No, sir.

Q. So far as you know, or have any reason to know, Mr. Sadler supposed the judgment notes to be given the banks were to save you, did he not?

A. Yes, sir.

Q. And you expected to get along?

A. Yes, sir.

Q. Do you remember whether you made a pencil memorandum of what your assets were at that time for Mr. Sadler?

A. I think I did.

Q. Will you look at that little paper I have handed you and see if those figures and the writing are yours?

Q. The figures are mine; the writing is not.

Q. The writing is a memorandum noted at the bottom is it not?

A. Yes, sir.

Q. A memorandum of what the paper is? You might read that memorandum—that writing?

A. "Given to H. M. Sadler, Junior, by C. E. Fargo, in New York, August 1st, 1896."

Q. That was the Saturday you were there?

A. Yes, sir.

Q. To the best of your recollection, is that a memorandum which you did hand Mr. Sadler at that time?

A. That is a memorandum I made, and I think I gave Mr. Sadler—I think I gave it to Mr. Sadler.

Q. Do you think you gave it to Mr. Sadler at that time?

A. I think I did.

Mr. Beale: That has some figures in there, so I will have to ...on Mr. Fargo to tell what it means.

(said paper exhibited to counsel.)

Q. That paper was intended, was it not, Mr. Fargo, to repre... your best judgment of what your assets and liabilities were?

A. Yes, sir.

Q. Will you please take the memorandum of figures and ex... it in full detail, so that it will appear intelligibly in the ...ord?

Mr. Tenney: I think the question should be what did he ...ve to Mr. Sadler.

Mr. Beale: I will put that afterwards, and ask you what you ...d to Mr. Sadler in connection with it.

Mr. Tenney: The mere figures on the paper, the amounts, ...e of no significance, but he could state what he said to Mr. ...dler.

Q. I wish you would state it in your own way as near as you ...collect.

Mr. Tenney: What he said to Mr. Sadler.

Q. (Continuing) What you said to Mr. Sadler in connection ...th that memorandum and figures shown thereon.

Mr. Beale: I want to say right here, and that is particularly ...rious, I am not making any point of these things, excepting, ...rting in every particle of evidence that I can remember to ...ow that there was no purpose on the part of the rubber com...anies or anybody else to commit an actual fraud, that we were ...ting in good faith and loaned the money to help the Fargo ...mpany, and that we believed their assets abundantly suffi...ent to take care of their liabilities at that time, and that Mr. ...argo told us so. My personal view is that he was simply over...anguine and misinformed.

A. This paper would recall to me the fact that if our assets ...ere cut in two, that their security would be abundantly good.

Q. Do you mean the fact that you said so to him?

A. This would recall to me that I must have said so to him.

Q. What did you say to him as to the amount of your assets ...d how those assets were made up, if anything, in connection ...th that paper?

A. It shows the accounts and merchandise in factory.

Q. These figures were put down to show him what your assets ...ere, were they not?

A. Without question.

Testimony of Charles E. Fargo.

Q. Mr. Sadler asked you about your assets?

A. He undoubtedly asked me about our assets and this paper would show that.

Q. Did you put down on that paper what your assets were?

A. I put down on that paper what our assets were, and the it was contemplated at that time taking the Metropolitan Ba and the Dixon banks in; I see here the amount of the Dixon debtedness.

Q. Does that paper contain figures from which you are a to state what you said to him as to the amount of your ass and liabilities—the amount of the assets and liabilities of y company?

A. This paper indicates a memorandum intended to s what our assets were.

Q. And completing the statement, as indicated by the pa what was it, as to what your assets were, what did you state Mr. Sadler in connection with that, that the assets of your c pany were and the liabilities?

A. I undoubtedly said to Mr. Sadler that the assets w $550,000.

Q. And as to the liabilities?

A. And liabilities of $378,000.

Q. These are the figures given on the paper?

A. These are the figures given on this paper.

Mr. Tenney: I would like to ask the witness if he recoll making such a statement.

The Witness: I do not recollect making such a statemen

Mr. Tenney: I object to the witness giving conclusions this paper of statements he states he does not remember m ing; the paper states what is on it.

Q. These are aggregate figures, are they not?

A. These are aggregate figures.

Q. What does the paper show as to the classes or as to details of the assets, how they are made up?

Mr. Tenney: Objected to; a construction of the paper; paper will show for itself what it does show.

Question withdrawn.

Q. What do the figures 225,000 in the upper left hand c mean?

Mr. Tenney: Objected to; the proper inquiry would see he what was said to Mr. Sadler. He stated he did no member saying anything to Mr. Sadler—it is his mere pr mental conclusion.

The Witness: Did I say I did not remember saying anything Mr. Sadler?

Mr. Tenney: No; not anything at all.

Mr. Beale: The witness has testified that he undoubtedly said to Mr. Sadler his assets were $550,000.

Q. Mr. Fargo, what did you say?

The Master: What he said at the time would be proper. I do not believe Mr. Fargo understands the question. Do you Mr. Fargo?

The Witness: As to what this paper indicates?

Mr. Beale: Yes.

Mr. Tenney: We object to that; we would like a ruling upon that; we want the conversation with Mr. Sadler.

Mr. Beale: I can shorten this, but this will lengthen it. Strike the question out.

Q. Did you or did you not state to Mr. Sadler in an interview with him substantially what you believed the assets of your company to be?

A. I did.

Q. What did you state were the assets of your company, approximately, to the best of your present recollection?

A. $550,000.

Q. Did you put down any figures about your assets and give those figures to him?

A. Yes, sir.

Q. How did you make up those assets. Did you explain to him how, rather, you made up those assets?

A. The assets were in three –

Q. No, no; did you explain to him how you made up those assets?

A. I must have told him how they were made up.

Q. Why? That would be a conclusion to say you must have told him so, but have you any reason to believe that you told him so?

Mr. Tenney: It seems to me the question should be whether the witness recollects having said so. We are entitled to a ruling on that

The Witness: May I make a little statement as to what I think in the matter?

Mr. Beale: That is just what I want, what I have been trying to get at for fifteen minutes, Mr. Fargo.

A. Well, I simply did not remember exactly what I stated to Mr. Sadler in regard to figures until that paper was before me

Testimony of Charles E. Fargo.

I stated—that is, I can remember the figures. I had a long conversation with Mr. Sadler in which figures were named, which this paper gives me the amounts.

Q. You remember, then, as a fact, that you explained to him of what your assets consisted?

A. I did.

Q. You simply do not recollect the exact form?

A. I could not recollect the exact form without a memorandum to recall the amounts.

Q. Do you believe these figures on that memorandum were the figures you gave him?

A. The figures on that were the figures I gave him.

Q. Having refreshed your recollection, what would you say now were the figures you gave him as to the classes from which your assets were made up?

A. The factory was $175,000; merchandise, $150,000, and accounts, $225,000.

Q. Making a total of how much?

A. Of $550,000.

Q. Now, do you remember whether you went into the classification of your liabilities in the same way?

A. Simply as to the amounts.

Q. You did not go into the details at all?

A. I went into the details on notes and accounts only, only as to separate items.

Q. As to separate items, do you remember what you said to him in regard to these two separate items?

A. I said to him the accounts were $70,000 and notes $80,000.

Q. Making a total of these two items how much?

A. $150,000.

Q. When Mr. Sadler went back to New York had he consented to your company's obtaining not exceeding $40,000 from the Metropolitan National Bank, for the purpose of enabling your company to go on successfully, and consented to the bank's participating in the preference?

A. Yes, sir.

Q. Do you remember where I was at that time?

A. No, sir; you were not here.

Q. I had left Saturday night, had I not, to go on a fishing trip to the Gaylord Club?

A. Yes, sir.

Q. And I did not return and was not in town until some days, a week or so, after the failure, was I?

o; you were not here.
ou did obtain very shortly thereafter $10,000 from the
olitan National Bank, did you not?
Yes, sir.
id that $10,000 go to your corporation?
Yes, sir.
Was the indebtedness of the corporation ultimately in
l by reason of the obtaining of that $10,000?
Newman: Objected to as a conclusion.
What was ultimately done with that $10,000 by the corpo
It went to pay debts.
And did pay debts—was applied on debts of the corpora
Newman: Objected to on the ground that the statement
question whether the money was used to pay debts is a
usion.
Did any of it go to the two rubber companies?
No, sir.
The money was used, was it not, to pay people whom
company considered as creditors of the corporation?
Newman: Objected to on the same grounds already
Yes, sir.
Newman: I want to know what actually occurred?
What was actually done with the money?
The money was divided between my brothers and myself
ly.
By the corporation?
By the corporation.
For what reason?
Because the corporation owed it to us; because we had to
e some money to live on, and the corporation owed it to us.
r. Newman: You do not mean the corporation owed you a
ng?
he Witness: No; I do not mean to put it that way.
On what ground did the corporation owe you the money?
For money actually loaned it.
Have you and your brothers loaned them as much as
,000?
Yes; more than twice as much.
Mr. Fargo, did you and your brothers ever discuss among

Testimony of Charles E. Fargo.

yourselves the conditions and prospects of the corporation and your respective purposes with respect to continuing in business?

Mr. Newman: Objected to as not cross examination and not relevant and not binding upon the complainants, and because we have no means—one reason being we have no means of contradicting—we were not present—do not know what occurred between them.

Mr. Beale: I intend to prove that in the discussions between them it was always the understanding that the Fargo Company should go on.

A. Yes, sir.

Q. Did you ever form any determination prior to August 1st, 1896, to go out of business?

A. No, sir.

Q. And end the business of the corporation?

A. No, sir.

Q. Was it your desire to terminate the business and wind up the corporation?

A. No, sir.

Q. Do you know what was the desire and purpose of your brothers on that subject?

A. The same as mine.

Q. Prior to the 1st of August, 1896—about August 5, 1896—what was your expectation as to the outcome of the financial embarrassments and the prospects of your company?

Mr. Newman: Same objection as heretofore urged.

Q. (Continuing) About August 5th, we will say.

A. We had no expectation of stopping.

Q. Did you have any intention of stopping?

Mr. Newman: Same objection.

A. No intention.

Q. You and your brothers concurred in the intention and expectation of going on, did you not?

Mr. Newman: Same objection.

A. Yes, sir.

Q. And did you expect you would be able to go on and rehabilitate the corporation?

Mr. Newman: Same objection.

A. Yes, sir.

Q. Was there at any time any agreement between you and the two rubber companies or any of their representatives and your company, or yourself, or your brothers, that your corpo-

should be placed in the control of the rubber companies, to
gan for their benefit?

Mr. Newman: Objected to on the ground that it calls for a
clusion and the mere opinion of the witness, and as not cross-
amination, and on the further ground that what the parties
d is the only thing that would throw any light upon what they
ended to do.

A. No, sir.

Q. There was no other agreement made then than the one
ich has already appeared in evidence?

A. No, sir.

Q. Was there any such agreement of placing your company
control of the rubber companies ever discussed by yourself or
anybody?

Mr. Newman: Same objection.

A. No, sir.

Q. Was it a part of the arrangement made January 6, 1896
at your company should not give judgment notes to any other
ncern, or mortgages, or other preferential instruments, without
e consent of the rubber companies or my consent?

A. Yes, sir.

Q. You testified yesterday, I believe, that all the judgment
tes given to the Candee Company prior to January 6, 1896,
mounting to $41,900, had been paid prior to August 6th?

A. Yes, sir.

Q. What did the indebtedness of $36,530 here on August 6th
the Candee Company represent?

A. Represented the unpaid balance of the $50,000 advanced.

Q. The advance of $50,000; the advance had been made
ginally by the Candee Company, to the best of your recollection,
d it not?

A. Yes, sir.

Q. The amounts given here are $36,530 as due the Candee
mpany and $140,671.01 due the United States Rubber Com-
ny. Are these amounts correct to the best of your recollection?

A. I think they are.

Q. And they represented actual bona fide indebtedenss of
r corporation to these companies, did they not?

A. Yes, sir.

Q. A part of that was proceeds of consigned goods, was it
t?

A. I think all of it was.

Q. Well, a part of it was, anyway?

Testimony of Charles T. Fargo.

Q. And incidentally this matter of the notes, this general subject came up, of the indebtedness to the rubber companies?

A. Yes, sir.

Q. And you expressed the view that your company was doing so well that you thought Mr. Johnson ought to voluntarily surrender in a few months the judgment notes?

(Same objection.)

A. Yes, sir.

Q. I said, did I not, that was purely a matter of business with him, outside, that I had nothing to do with it?

A. Yes, sir.

Q. In asking you yesterday about the indebtedness as shown at the time of the failure, we were a little puzzled about the indebtedness to the Candee Company. Let me ask you whether the advance of $50,000 was not made wholly by that company?

A. As I thought of it afterwards it seemed to me I gave Mr. Johnson for the Candee Company notes for that $50,000.

Q. On January 6th, $10,000 was advanced to you by L. Candee & Company; why was it advanced so quickly?

A. Because it was needed immediately.

Q. You needed the money right off?

A. We needed the money at once.

Q. If this arrangement was consummated it had to be consummated within a very few days after Mr. Johnson got here?

A. Yes, sir.

Q. Was any inventory made by Mr. Johnson or Mr. Sadler at that time?

A. No, sir.

Q. Was any attempt made by them to make an inventory?

A. No, sir.

Q. Would it have been possible for them to make an inventory, in point of time, before you needed the money?

(Objected to.)

A. It would not.

Q. Practically, Mr. Fargo, how long would it have taken a reasonable number of men, clerks and so forth to have made a fairly correct inventory of your affairs?

A. About five days.

Q. How many men?

A. As many men as we had employed.

Q. And could they have done it in five days?

A. Yes; they could have done it in five days if they had nothing else to do

Devoted themselves entirely to that, including the prop Testimony of Charles S. Fargo.
at Dixon?
Oh, my, no.
I mean taking the whole thing?
It would have taken three weeks.
You had to have part of the money by January 6th, did
not?
Yes.
You said, Mr. Fargo, that the arrangement was carried out
made. You did prefer some other creditors, did you not,
paying them? People to whom you were indebted on January
and paid money to them?
Yes, sir.
Was there any stipulation ever made that you should not
that?
No, sir.
It was only that you should not give preferential instru
nts?
Yes, sir.
Approximately, to what extent, stating by recollection,
you or your concern subsequently pay people to whom you
re indebted on January 6th—to a small extent, or to a large
ent?
Nine tenths, I should say, of the indebtedness of January
was paid.
Nine-tenths of the indebtedness existing January 6th was
sequently paid, excluding the two rubber companies?
Yes; excluding the rubber companies; I do not know but
re.
Your concern went on dealing, to a considerable extent,
h many of the same people that it had previously dealt with,
it not?
Yes, sir.
And incurring new indebtedness?
Yes, sir.
It also dealt with people to some extent whom it had not
eviously dealt with?
Yes, sir.
And incurred indebtedness after that to them?
Yes, sir.
Did it also continue between January 6th and August 6th,
aying money upon its current accounts incurred after January
6th?

Testimony of Charles E. Fargo.

A. Yes, sir.

Q. Between January 6th and August 6th, what was the general change in the aggregate indebtedness of the Fargo Company—was it increased or diminished between those dates?

A. Diminished; the indebtedness diminished.

Q. Can you state approximately about how much?

A. Why, I should have to go over the books to know, but my recollection is about $50,000.

Q. I am speaking, of course, of the indebtedness that existed before the advance of $50,000 by the Candee Company was made. I do not include that. Say January 5th, instead of January 6th? I do not mean to disconcert your figures or your reckoning, but for the indebtedness, Mr. Fargo, I do not take that into account at all?

A. Well, the indebtedness as it stood on January 6th, the total, including the rubber companies and everything else, and the indebtedness as it stood on August 6th—the total, including the advance and everything else, was at least, it seems to me as closely as I can recollect, about $50,000 less.

Mr. Beale: I think that is about right.

Q. Do you remember coming to my office and having an interview with me on or about July 30th, with reference to the Metropolitan National Bank?

A. I do.

Q. Do you remember what day in the week it was? Was it Thursday?

A. I do not remember the day of the week.

Q. You left for New York that night, did you not?

A. I left for New York the same night.

Q. Reaching New York so you could have your interview possible, with Mr. Johnson or Mr. Sadler on Saturday?

A. Yes, sir.

Q. You left on Thursday night on the limited so you could reach New York on Friday night?

A. Yes, sir.

Mr. Beale: Thursday was July 30th, and Saturday was August 1st.

Q. Do you remember what you came in about and what I said to me, and, if so, please state it to the best of your recollection.

Mr. Newman: Objected to as not cross-examination.

Mr. Beale: It all relates to that subject, the maturity of the indebtedness to the Metropolitan National Bank on August 5t

gs out his reasons for going to New York. Perhaps it will ng out the matter more clearly if I ask you some questions.

Q. You came in there and told me that your company had a e shortly maturing at the Metropolitan Bank?

The Witness: Yes.

Mr. Beale: And you also explained to me that during the nth of August you found that your company was likely to d $5,000 and possibly $10,000 to pull you through?

The Witness: I have forgotten what I stated in that line.

Q. But substantially that?

A. Yes.

Q. In other words, that it was much similar, about the same uation, as had existed in January? That you would need a e money in August—a little help in August?

A. I had forgotten that that was the case, but I remember—

Q. Do you remember saying to me at that time that Mr. Keith d promised you a line of credit of $50,000, and you had only out?

A. Yes.

Q. You owed him then $40,000—

A. No; he had promised me a line of $65,000.

Q. No; I am wrong; he said about $65,000, and you had then r $40,000 borrowed from them?

A. Yes, sir.

Q. Do you remember recalling for me that Mr. Johnson and I d originally suggested in having the Metropolitan Bank par ticipate in the arrangement of January?

A. Yes, sir.

Q. And then you suggested, if we were willing, that you ould tell the bank the whole story and arrange to get $10,000 you needed it?

A. Yes, sir.

Q. That is the fact, isn't it—about the way it went, wasn't it?

A. Yes; as I remember it now; your question recalled these ints I had forgotten.

Q. Do you remember stating substantially that you supposed e rubber companies would not desire to advance any more oney in there, and that in order to get an advance from Mr. eith he could question you, and you would need to tell him e whole story, and so he would have to be taken into the ar angement?

A. No; I don't remember.

Q. Do you not remember that there came up through a con

Testimony of Charles E. Fargo.

versation between us the topic that there would necessarily be some questioning and discussion between you and Mr. Knapp?

A. If I remember rightly, I said that Mr. Keith was not willing to live up to his original agreement.

Q. Of $65,000?

A. Of $65,000, and that we had counted on having so much money in reserve from him, and as long as he was not willing to keep that agreement, we would be short of money. That comes to me now.

Mr. Beale: I think that is right, as you put it; I remember your saying that.

A. (Continuing.) And I think I stated to you the further fact that if I could not get it, and there was to be trouble, I did not want to renew the note that we had just about to mature with the bank.

Q. You did not want to renew that right on the eve of trouble?

A. I did not want to renew that right on the eve of trouble.

Q. But we discussed definitely and to some extent, did we not, the fact that there would probably ensue questioning and inquiry on the part of Mr. Keith, if you went near him?

A. Yes; that came up.

Q. So there was no use in your going near him unless you told him the whole story, because you would tell him the truth or nothing; that is the way you expressed it, and you must keep away or be prepared to tell the whole story?

A. Yes; that is a fact.

Q. I said to you, when you talked with me, that whether we made any arrangement to let Mr. Keith advance more money or like footing with ourselves depended wholly on your assets, did I not? If your assets were sufficient to protect your credit that there would be no objection so far as I could see—no legal objection, and suggested you should go to New York?

A. You suggested my going to New York, as it was a business arrangement that you would not have anything to do with.

Q. That being a question of assets, something I knew nothing about?

A. Yes.

Q. And I agreed to write, did I not, and tell him you were coming, and give him my views about it?

A. Yes, sir.

Q. You went to New York, and reached there Friday night, did you not, the last day of July—if it was the last day of July?

A. Yes.

Q. Did you see Mr. Johnson on the following day?
A. No, sir.
Q. Do you remember why?
A. He was ill at somewhere in Connecticut, and I reached
by telephone.
Q. His father had just died, had he not, and he was over there
account of some family illness, so you did not see him to
a talk with him in New York?
A. Yes; but I saw Mr. Sadler.
Q. You saw Mr. Sadler?
A. Yes, sir; and I telephoned to Mr. Johnson.
Q. Did you explain the situation to Mr. Sadler substantially
you had to me?
A. Yes, sir.
Q. What conversation took place, if any, between you and
Sadler on the question of assets of the company?
A. I do not remember.
Q. Right here let me ask you another question that goes back.
you remember ever mentioning to Mr. Sadler about the
largement of the factory in the spring of 1896?
A. No, sir.
Q. Mr. Sadler came out here with you, did he not, when you
me back from New York?
A. Well, I think he came with me—that we came together.
Q. Leaving New York Saturday and reaching here Sunday
ht?
A. I have forgotten the days, but I was only in New York
rt of one day.
Q. Part of one day, and Mr. Sadler came back with you and
mained only part of one day, and then went back?
A. I do not remember; I have forgotten about how long he did
ay.
Q. He was here a short time, was he not—a very short time?
A. Yes, sir.
Q. There was some discussion, which ultimately came to
ught, was there not, about going to the Dixon banks, instead
the Metropolitan National Bank, between you and Mr. Sadler
about preferring the Dixon banks?
A. I had forgotten it; your question makes me think that
mething of that sort came up, but I do not remember.
Q. You do not recollect the details of it?
A. I do not recall the details of it.

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Testimony of Charles E. Fargo.

A. Yes, sir.

Q. A part of that was due for the advance?

A. I meant to the United States Rubber Company.

Q. That was for consigned goods?

A. That was for consigned goods.

Q. As a matter of fact, the practice with reference to these consigned goods was that you received the goods and sold them and remitted at pleasure, practically?

Mr. Newman: Objected to.

A. We received goods and sold them and gave notes according to contract. There was a specification in the contract as to how we should pay for them.

Q. And the $140,000 of your figures represents the value of consigned goods for which you should have remitted the proceeds to the rubber company?

A. Yes, sir.

Q. And which you had previously sold?

A Yes, sir.

Q. And that amount is a balance which was due them?

A. Yes, sir.

Q. Between January 6th and August 6th there had been more or less business transacted between your company and the United States Rubber Company, had there not?

A. Yes, sir.

Q. And the indebtedness had varied between those dates?

A. Yes, sir.

Q. As a matter of fact you owed the United States Rubber Company a little more August 6th than you did January 6th, did you not? And the Candee Company a little less?

A. That may be; the aggregate between the two was less, I know—a little.

Q. Was there any agreement, or was there any term of any agreement, verbal or written, at any time between January 6th and August 6th, made between your company and the rubber companies, or either of them, that your company should proceed after January 6th to increase its tangible assets?

A. No, sir.

Q. That point was never suggested or discussed, was it?

A. No, sir.

Q. In your affidavit filed in this case it is stated that on January 6, 1896, and during more than six and one-half months thereafter, affiant and the other stockholders of C. H. Fargo & Co. confidently expected that said company would overcome its

PAGE CUT OFF

financial difficulties, and the entire conduct of its business, of which affiant and the other stockholders had control, was intended to accomplish that result. Would you make that same statement to day?

A. Yes, sir; it is a fact.

Q. It is also stated that "during said period between January 1 and August 6, 1896, the business was managed and conducted solely and exclusively in the interest of C. H. Fargo & Co., and neither the said rubber companies or either of them, their agents or representatives, nor the said Beale nor the said directors proposed by the said Beale, had any voice, influence, control or participation whatever in the management of said business, nor could they have had knowledge of what was actually done by affiant or C. H. Fargo & Co. in the conduct of the business." Would you make that same statement to day?

A. Yes, sir.

Q. That is true, is it?

A. That is true.

Q. After you had arranged with Mr. Sadler that you should be allowed to obtain more money from the Metropolitan National Bank, you felt confident you could go on all right, did you not?

A. Up to August 5th, yes, sir.

Q. Up to August 5th?

A. Yes, sir.

Q. On August 5th, or just immediately preceding that date, your views were entirely changed?

A. Yes, sir.

Q. Did you come into the office of Isham, Lincoln and Beale and indicate that you had changed your mind or was discouraged?

A. Indicated the conditions?

Q. You came into the office?

A. Yes, sir.

Q. Whom did you see there? Was it not Mr. Porter?

A. Mr. Porter.

Q. You saw Mr. Porter?

A. Yes, sir.

Q. And you said to him, did you not, in substance, that you had come to feel you might just as well throw up the sponge?

A. I asked him what the result of a note going to protest was—what the result would be on the United States Rubber Company's judgment notes, and told him the circumstances.

Evidence taken before Master.

Testimony of Charles E. Fargo.

Q. You told him practically you were discouraged did you not—that you thought you might as well go up?

A. I do not remember; I may have told him so.

Q. In answer to a question on direct examination you stated that the five directors put in at my instance were put in by my direction. Those directors were really elected by the stockholders, were they not?

A. They were elected by the stockholders.

Q. And by my "direction" you mean, they were nominated by me?

A. That is what I proposed to convey.

Q. They were put in for the purpose of carrying out the agreement with the rubber companies?

A. Yes, sir.

Q. And that is the only way they were put in by my direction, wasn't it?

A. Yes, sir.

Re-direct Examination by Mr. Newman.

Q. Mr. Fargo, in answer to a question put to you by Mr. Beach you stated that you believed the Fargo Company was solvent in January, 1896?

A. Yes, sir.

Q. Did the Fargo Company sustain any losses of any special character between August 6 and January 6, 1896?

A. No, sir.

The Witness: I want to ask a question: you mean sustain any losses of any considerable amount?

Q. Yes; I mean any losses that would affect its financial condition?

A. No sir.

Q. It did not?

A. No, sir.

Q. Mr. Fargo, what was the general period of credit upon which the Fargo Company bought its merchandise?

A. It bought on various terms; we considered that everything had to be discounted, that is to say, ought to be paid for within thirty days in order to make it profitable.

Q. Yes; well, when did you consider or when did the contract prescribe that an indebtedness had to be paid?

A. At different times; some merchandise was bought on thirty days' contract, some on sixty days, some on four months

Testimony of Charles S. Fargo.

time, and the old fashion of buying boots and shoes ready manufactured, I do not think had ever been changed from six months, although it never was stated on the bills—terms of that character.

Q. Then, what was the longest credit that you ever obtained in the regular course of prosecuting your business during the year 1896?

A. I do not know that I can answer that accurately. I think, however, you might safely state four months.

Q. Four months?

A. Yes.

Q. How much did the Fargo Company owe on August 5th and 6th, 1896, outside of what it owed the two rubber companies and the Metropolitan National Bank?

A. I think about $150,000; I am not sure.

Q. Well, it was at least $150,000, wasn't it?

A. I do not know that it was $150,000; but as nearly as I can recollect it was about that amount.

Q. Well, it was over $140,000?

A. I am not sure that it was. (After a pause.) About $150,000, as near as I can recollect, sir.

Q. After reflecting and thinking over the matter what do you say was the indebtedness of the Fargo Company on August 5th and 6th, outside of what it owed the two rubber companies and the bank?

A. As near as I can remember, about $150,000.

Q. What part of that indebtedness was created after the end of January, 1896?

A. After the end of January?

Q. Yes, sir?

A. I should say $125,000. I do not know; I am not speaking by the book; I cannot tell you exactly, but as nearly as I can say now it would be $125,000.

Q. Between January 9, 1896, when this arrangement with the two rubber companies was consummated, and August 5, 1896, did you obtain any extensions for debts that matured during that period, excepting the extension which you obtained from the Metropolitan National Bank on August 2, 1896?

A. Not that I remember that we asked for; we may have been slow in payments, but I do not remember to have asked for any time from any one.

Q. Between January 9th and August 6th, 1896, a period of nearly seven months elapsed; must it not be true that prac-

Testimony of Charles E. Fargo.

tically all the indebtedness that existed on August 5, 1896, other than the two rubber companies and the bank, must have been created after January 9, 1896?

A. Yes, sir.

Q. In other words, your company got the merchandise and property from its present creditors, other than the two rubber companies and the bank, after this arrangement was made with the two rubber companies?

A. Yes, sir.

Q. In answer to a question put to you by Mr. Beale, you stated that the subject of giving the two rubber companies a chattel mortgage was discussed in January, 1896. Do I quote you correctly?

A. I think you do.

Q. What were the circumstances under which Thomas Cratty, your counsel, stated that the giving of a chattel mortgage to the two rubber companies would destroy the credit of the company?

A. I do not remember.

Q. Do you remember his saying that?

A. I do not remember whether he said so, or whether I said so, or whether Mr. Beale said it; I know I would have said it, but whether Mr. Cratty said it I do not remember, but that was said by somebody.

Q. That point was brought up by somebody?

A. Yes, sir.

Q. And therefore the thought of giving the chattel mortgage to secure the two rubber companies was abandoned?

A. Yes, sir.

Q. Was it abandoned for that reason, that to give a chattel mortgage would destroy the company's credit?

A. I do not know whether it was for that reason or not; that would have been a reason anyway.

Q. Can you recall any other reason?

A. Unless there was some legal reason that I do not know anything about.

Q. What was the occasion upon which Mr. Thomas Cratty said that to discuss the credit of your company was very much like talking about the reputation of a woman and would be sure to destroy it?

A. I cannot remember the circumstances; I do not know exactly what brought that up.

Q. In the statement made by Mr. Beale to the court and treated as an affidavit on the hearing of the motion for a re-

Testimony of Charles E. Fargo.

ver, Mr. Beale made this statement: "He" (meaning your
. Mr. Fargo) "says if you should take a man around the
eet in our line of business they will talk and at once it will
ate a lot of unnecessary gossip. You know damage can be
ne that ought not to be done, just as damage can be done to a
an's reputation by discussing it; that the credit of a com-
cial house is something that cannot be talked about on the
eet. And he" (meaning yourself) "says if this merchant
hat merchant is put in as a director of this corporation, it
l arouse some discussion, and I would rather have them
en from your office" (meaning the office of Mr. Beale). Is
statement substantially correct?

A. Yes, sir.

Q. And that occurred at the time these matters were being
ussed between you and the rubber companies; is that right?

A. Yes, sir.

Q. You said that the money that you borrowed from the
tropolitan National Bank in the summer of 1893, or which
owed them at that time, and for which they demanded and
ived judgment notes, was all paid up?

A. It was, sir.

Q. Then there was a period or a time when the Fargo Com-
y owed the bank nothing?

A. Yes, sir.

Q. Now, if you were so indignant at Mr. Keith as the result
his imperative demand for judgment notes, why did you not
the bank at that time when you owed him nothing?

A. Because it was a time of commercial depression, when it
s not a favorable time to make a change of banks.

Q. But that must have been some time the following year—
e $130,000 was all paid in 1893, wasn't it?

A. No, sir; the last was $65,000, due on the 15th day of Febru-
y, 1894.

Q. You never contemplated leaving the bank and seeking
w credit elsewhere?

A. I did.

Q. Did you take steps in that direction?

A. I went to the president and the cashier of the Metropolitan
ational Bank and told him that if Mr. Keith or the bank had
t confidence in us, we were ready to change, and I wanted a
an of $65,000 if we stayed there.

Q. And they agreed to give it to you?

A. They agreed to give it to us.

Testimony of Charles E. Fargo.

Q. And now do you say that Mr. Keith ever at any time denied you that line of $65,000?

A. Yes, sir.

Q. When was that?

A. In 1896 he said to me that money matters were close, and he could not allow me the $65,000.

Q. What time in 1896? After this arrangement?

A. The latter part of 1895.

Q. Oh, 1895?

A. The latter part of 1895 he told me that, sir.

Q. But not in 1896?

A. In the latter part of 1895 he said that he wanted our account entirely paid at some time shortly afterwards, before we increased the line of credit, and we had at that time about $40,000, and I told him that would be practicably impossible for six months anyway, but that by March of 1896 we would reduce it to $20,000 if then we could have our line of credit again, which he agreed to.

Q. What line of credit?

A. The $65,000. We never did get up to $65,000, as a matter of fact.

Q. As a matter of fact you did not decrease it?

A. We did decrease it to $20,000 in March.

Q. Did you comply with his condition?

A. We did. Yes, sir.

Q. So that in March, 1896, Mr. Keith was ready to lend you $65,000?

A. We did not ask him for $65,000.

Q. Did he agree to?

A. He agreed to.

Q. Now, do you know of anything that was said or done by Mr. Keith from which you could draw the inference that he would refuse to keep his word with you?

A. Mr. Keith said to me that money matters were —

Q. No, no. I am not speaking of March, 1896.

A. In March, 1896, I had no conversation with him, simply perhaps, to tell him—to point out to him that we had kept his conditions.

Q. Now, when you had pointed out to him that you had kept his conditions and reduced the indebtedness from $40,000 to $20,000, did he say or do anything indicating that he would not keep his word with you, and allow your line of credit to run up to $65,000?

A. No, sir.

Q. Then, so far as you know, after March, 1896, the bank was ready to allow your company a credit of $65,000?

A. Yes, sir.

Q. You say that the Candee Company advanced the whole of the $50,000 in January, 1896?

A. Yes, sir.

Mr. Beale: January and February.

Q. On January and February, 1896?

A. They advanced the $50,000, and I think it was all in January.

Q. As a matter of fact, the Candee Company was acting on behalf of itself and also for the United States Rubber Company, was it not—a joint arrangement?

A. The money came directly from the Candee Company.

Q. Is it not a fact that the Candee Company paid you no money at all but that you executed—your company executed—a series of ordinary, plain promissory notes, payable to the order of the company, and by the company endorsed in blank, and turned those notes over to the Candee Company, and that company discounted the paper and sent you the proceeds and charged you with the cost of the discount?

A. No, sir. That is not the fact.

Q. It is not?

A. No, sir; not the way it was at all.

Q. Then state what the facts were?

A. The fact was they sent us drafts for $10,000, each in periods of three or four days, whatever the case might be—I do not remember the exact dates; but they sent that in cash. Mr. Johnson said he wanted notes to show for that money to the Candee Company, and we gave him in one bunch $50,000 notes of $10,000 each.

Q. And he took those back with him to New York when he left in January?

A. I do not think he did. I think I sent them afterwards, possibly to Mr. Sadler, but Mr. Johnson went away anyway.

Q. Was not the bunch of notes given to enable Candee & Company to discount them and raise the money?

A. I do not know that, because we got a portion of it before they got the notes at all.

Q. Isn't it a fact that it was your understanding that the notes were to be discounted?

A. The way it was explained to me was that the Candee Com-

Testimony of Charles E. Fargo.

pany had to have something to show for that money. Whether they wanted to raise the money on it or not, of course I could not tell.

Q. Now, those notes were given in January, 1896, were they?

A. Yes, sir.

Q. What was the period of maturity of those notes?

A. I think they all matured—I don't know—I think in June.

Q. Were not they all ordinary bankable paper?

A. Yes, sir.

Q. Running not to exceed four months?

A. I think not; I think they matured in June.

Q. In June, 1896?

A. Yes, sir; but I cannot recollect the date exactly, but that is my impression as I think of it.

Q. That would be five months?

A. That would be five months.

Q. Were these notes all paid as they matured?

A. No, sir; there was afterwards some further arrangement about extending the time of them; they were not expected to be paid in a bunch all at one time.

Q. Was that the understanding in January?

A. Yes, sir.

Q. What was the understanding as to when they should be paid?

A. I know they were payable so close together that it would be a practical impossibility for us or any commercial concern to have paid them at maturity.

Q. What was your understanding as to when they were to be paid?

A. I do not know as in January there was any specific understanding about it.

Q. Well, if you gave the notes you expected to pay them, didn't you?

A. If I remember rightly, Mr. Johnson said that he would take care of that paper himself—that the company would take care of that paper, and we could extend it on any time convenient to pay.

Q. But you were paying the other notes that the Candee Company had, and that the United States Rubber Company had, and that matured after March 9th, weren't you?

A. Yes, sir.

Q. Paying them as they matured?

A. Paying them as they matured.

Q. Now, did you pay any of the $50,000 bunch of notes that was given to the Candee Company in January, 1896?

A. Not as those original notes were. If I remember rightly, they were changed, some payable in May, some in June, some July and some August.

Q. Did you pay any of them?

A. We did—those that matured in May, June and July.

Q. So there was an extension of that indebtedness?

A. It was changed; it would hardly be called an extension. I think part was made to mature earlier and part later.

Q. Did it all mature before August 5, 1896?

A. No, sir; it did not.

Q. How much was unmatured?

A. I cannot tell except so far as the figures here in your records show.

Q. Mr. Fargo, you stated that it would have taken about five days for Mr. Johnson to have taken an inventory of the property in Chicago in January, 1896?

A. Yes, sir.

Q. Is that correct?

A. That is what I stated; yes, sir.

Q. How long would it have taken Mr. Johnson to have examined the books, or any expert, to get a general notion of how your firm stood?

A. I do not know how long it would have taken an expert bookkeeper, but he could not have done it inside of ten days.

Q. Could not any person familiar with the books and accounts have determined whether your outstanding book accounts were current or dead accounts by an examination of the same?

A. They could have determined by an investigation; yes.

Q. By "dead" or "current accounts," I mean the ordinary merchandise accounts sold on two, three and four months credit, and whether the debt had not been paid, or not paid, whether it was an old account; that was easy enough to determine, wasn't it?

A. Yes, sir.

Q. Did Mr. Johnson examine the books?

A. No, sir.

Q. Did he cause any examination of the books to be made?

A. No, sir; he did not.

Q. Did he ask for the privilege of examining the books?

A. The privilege was offered him, I think.

Testimony of Charles E. Fargo.

Q. By you?
A. By me.
Q. Did he make any examination?
A. No, sir.
Q. Did he offer to make any?
A. No, sir.
Q. Did he suggest that he would employ anybody?
A. No, sir.
Q. Did he make no examination of the assets at all?
A. No, sir.
Q. None whatever?
A. None whatever.
Q. You stated in answer to a question put to you by Mr. Beale that you preferred other creditors after January 6th; you did not mean that, did you?
Mr. Beale: By paying them, he said.
Q. (Continuing) When a man presented an overdue bill you simply paid it?
A. That is what the question meant, as I understood.
Mr. Beale: That is right.
Q. The complainant in this case is the American Oak Leather Company; how long have you known that concern?
A. I do not remember.
Q. Had the American Oak Leather Company sold your company any considerable amount of merchandise prior to August 6, 1896?
A. Yes, sir.
Q. Is it not a fact that they had not given your concern any credit for several years prior to purchases made in 1896?
A. I do not think we had been dealing with them extensively.
Q. Is it not a fact that you never owed them to exceed $2,000 or $3,000 prior to January 6, 1896?
A. I think very likely—I don't remember—I cannot tell you exactly.
Q. All of the merchandise which they sold your company and for which they recovered judgment upon which they sued as then due, or described in this bill of complaint, was sold to your company after January, 1896?
A. I think it was.
Q. Do you think they would have sold you any merchandise if you had imparted to them the knowledge as to what you had done in January with the two rubber companies?
A. No, sir.

Q. Do you think any of your creditors would have sold you any merchandise or had any dealings with your company if you had imparted to them what you had done in January, 1896, with the two rubber companies?

A. Likely not.

Q. Did you impart that knowledge to any of your creditors?

A. No, sir.

Q. Your effort was to keep it secret?

A. Yes, sir.

Q. And apparently you succeeded?

A. I think we did.

Q. Mr. Sadler came back with you from New York in August, 1896?

A. Yes, sir.

Q. Did he come on here to make any investigation as to your condition?

A. No; I think not—he did not make any investigation.

Q. Did he make any further investigation, or other investigation, other than Mr. Johnson made in January?

A. No, sir.

Q. Did Mr. Sadler come on to Chicago with you in August, 1896, at your request?

A. If I remember rightly now, he came on thinking that it might be best for him to go and see the bank, or be here when the conference with the bank was held.

Q. Did he go to see the bank?

A. He did not.

Q. Was he here after the conference with the bank was held?

A. I think not.

Q. Well, then, he practically came on to Chicago for no purpose?

A. It did not amount to anything his coming here.

Q. You returned in company with Mr. Sadler to Chicago, on Sunday, August 2, 1896?

A. I do not remember the exact dates, but that is the way Mr. Beale has it, and I think that is correct.

Q. So that you were ready for business on August 3, 1896?

A. Yes, sir.

Q. Which was the following Monday morning?

A. Yes, sir.

Q. Now, when did Mr. Sadler return to New York?

A. I think he went back on Monday; I am not sure of that;

Testimony of Charles E. Fargo.

we did not see anything more of him. Mr. Sadler had other business in Chicago all the time.

Q. But he came back with you?

A. He came back with me for my business.

Q. He did not come here to do any other business, except as he might incidentally attend to it while here?

A. No, sir.

Q. Now, when did you call on Mr. Keith of the Metropolitan National Bank for the purpose of having that note due August 2d extended?

A. I did not call upon him at all for that purpose—simply sent it and had it renewed.

Q. Then you had that note renewed before you had disclosed to the bank the nature of the arrangement between the Fargo Company and the two rubber companies?

A. Yes, sir.

Q. Now, when did you first call on Mr. Keith and tell him of the arrangement made between the Fargo Company and the two rubber companies in January, 1896?

A. On August 5th.

Q. On August 5th?

A. Yes, sir.

Q. Monday was the 3d, Tuesday the 4th; then you must have made your call on Wednesday, August 5, 1896?

A. I think it was August 5th. I know now the date of the maturing of that note; it was August 3d; I have got it in my pocket.

Q. Have you got with you the original note that was held by the Metropolitan National Bank and which you wished to have extended?

A. No, sir; I have the extended note.

Q. When did that note mature?

A. It matured on October 2d.

Q. No, no; the original note?

A. On August 3d, evidently, because I have got the renewal.

Q. How much is the renewal?

A. $10 000.

Q. And the renewal note is dated what?

A. August 3, 1896.

Q. Maturing in—

A. October 2, 1896.

Q. So that as a matter of fact the $10,000 note due at the Metropolitan National Bank and which you were solicitous

Testimony of Charles E. Fargo.

out having renewed, actually matured on Monday, August 3, e?

A. Yes, sir.

Mr. Tenney: Is that that last day of grace?

The Witness: I don t think there is any grace.

Q. That was the last day of maturity?

A. That was the last day of maturity.

Q. Now, Monday, August 3d, and Wednesday, August 5th, d anything occur in the business of the Fargo Company differ- t from what had occurred the preceding days prior to August ? Anything of a threatening character?

A. Between August 3d and August 5th?

Q. Yes.

A. I do not remember that anything did occur between those ates. I know there did on August 5th.

Q. What occurred on August 5th?

A. On August 5th a note for $5,000 became due that we had in r note book down as due the 13th; we did not discover it till resented for payment, and we had not the money.

Q. Did you make any effort to borrow it?

A. We telegraphed the holders, or the parties to whom we d given the note, asking them to extend it, and received no ply.

Q. Did you make any other effort of any kind to borrow the ney to pay the note?

A. I do not think we did.

Q. Did you telegraph to the rubber companies about the ma- rity of that note?

A. No, sir.

Q. How?

A. No, sir; not that I remember of.

Q. Did you go to the bank to borrow the money to pay that ote?

A. I do not think we did.

Q. But you did call on the bank August 5, 1896, according to he records of your company, and enter into negotiations with he bank to sell them the Dixon property. Are the records truth- l on that subject?

A. I think they are. Those dates, August 5th and 6th, I do t remember exactly what took place; there was so much be- ween those two dates.

Q. On August 5, 1896, you also gave the Metropolitan National

Testimony of Charles E. Fargo.

Bank two judgment notes for $25,000 each. You have seen the original notes?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

Q. Was August 5th the day on which you told the bank that you wanted the $10,000 to pay yourself and your two brothers to live on?

A. August 5th, after discussing the matter with or before going to the bank—I don't know whether before going to the bank or talking with the bank—the taking of that $10,000 was the consideration of that day or that immediate period.

Q. Did you call on any representative of the rubber companies in Chicago on Monday, August 3d, Tuesday, August 4th or Wednesday, August 5th, 1896, to discuss with them the same matter that you discussed with the bank on August 5, 1896?

A. I did discuss with them on August 5th the same things.

Q. Not before?

A. Not before.

Q. With whom?

A. Oh, I was in before; I do not know; I may have talked; may have talked; the thing did not come up till August 5th, only in the using of the judgment notes, as I know of.

Q. With whom did you talk?

A. I talked with Mr. Porter.

Q. Did you talk with him about this $10,000?

A. I do not know as I said anything to him about the $10,000 or how it was to be used?

Q. You did discuss it with him?

A. I do not know that I did; I do not know that he knew how the $10,000 was to be used. I do not remember whether I did or not.

Q. You talked with Mr. Sadler about that, as you stated in your answer to Mr. Beale's question?

A. No; I did not talk to Mr. Sadler about it.

Q. Didn't you say to Mr. Beale in answer to a question put by him that Mr. Sadler was willing you should get $10,000 from the bank?

A. Yes, sir.

Q. And Mr. Sadler consented to that?

A. Yes, sir.

Q. When was that?

A. That was in New York.

Testimony of Charles E. Fargo.

Q. What was that $10,000 for?

A. That $10,000 was to be used to carry on the business for turing paper and so forth—for accounts.

Q. Why did you need to have Mr. Sadler's consent to borrow 000 from the bank if you needed it? Did Mr. Sadler own your mpany so you could not even borrow the $10,000?

A. No; that goes back to what I attempted to tell you—

Q. No, no; why did you need Sadler's consent to borrow 000 from the bank?

A. Because Mr. Keith had refused to let us have more than 000 at that time.

Q. Why, Mr. Fargo, you don't mean that?

A. I do mean it.

Q. Didn't you say to me that in March, 1896, you had reduced e indebtedness to $20,000?

A. Yes, sir.

Q. And that Mr. Keith had told you, if you would reduce it $20,000 in March, he would allow you a credit of $65,000?

A. Yes, sir.

Q. And didn't you further say that nothing ever occurred after at which would lead you to think Mr. Keith would not keep is promise?

A. No; it was this way; you did not allow me to finish my swer.

Q. Do you mean I did not give you every opportunity of an- wering?

A. Perhaps you thought it was not an answer; you did not y any time thereafter, if I remember rightly. I wanted to tell u what occurred with Mr. Keith.

Q. Now, why did you need Mr. Sadler's consent to borrow 000 from the bank?

A. Because I would have to tell Mr. Keith about the judg- ent notes.

Q. Why would you have to tell him?

A. Because he had said on account of the condition of the nancial market that they wanted to reduce their lines of redit.

Q. When did he say that?

A. He said that to me in July.

Q. What year?

A. 1896.

Q. Did he say then that he would not give you a credit of 5,000?

Testimony of Charles E. Fargo.

A. He did, sir.
Q. Positively refused?
A. Yes, sir.
Q. Are you sure about that?
A. Yes; and I told Mr. Beale about it.
Q. Sure about it?
A. Yes, sir.
Q. How does it come he did give you $10,000 in August, 18
A. You mean the additional $10,000?
Q. Yes.
A. Because I did tell him—because I did tell him and g him the judgment notes.
Q. You said that in July he refused to give you additio credit?
A. Yes, sir.
Q. Now, what happened on August 5, 1896, which made M Keith change his mind and give you the additional credit $10,000?
A. In order, I presume—in order that he might be in that jud ment note.
Q. In order that he might have a preference?
A. Yes, sir.
Q. That is the only reason?
A. That is the only reason, I presume.
Q. In answer to a question put to you by Mr. Beale you that the judgment notes were given August 5, 1896, to the ba with the intention that the Fargo Company should continue business. Is that correct?
A. Did I say that?
Q. That was what I understood—answer what the fact is?
A. I do not remember that question or to have answered that way.
Q. Answer what the fact is—what was the understandi when you gave the judgment note and the deeds for the Dix property?
A. When I gave him the deeds to the Dixon property, of cou it was with the understanding they were to take our property.
Q. What was to become of the business of the corporation?
A. It was to go into their hands under whatever process law they took it.
Q. Is the same thing true when you gave the judgment note the three instruments given on the same day?

A. Yes; undoubtedly, when we gave them the judgment notes they were given at the same time.

Q. You said in this morning's examination that you and the rubber companies, or some representative of the rubber companies, were discussing the feasibility of taking the Dixon banks into the arrangement. Why did you have that discussion?

A. That was a point that came up between my brothers and myself, or my brother, F. M., and myself, and he had been instrumental in getting the Dixon banks to loan money, and he thought that if the bank here was preferred that those banks should also be. That was all there was in that contemplation.

Q. Well, something was said about taking the Dixon banks and borrowing some money from them?

A. No; it was not with a thought of borrowing any more money from them.

Q. It was not?

A. I think not; I am very sure it was not.

Q. Do you know what your brother, F. M., said to the Dixon banks when he borrowed the money which your concern owes those banks?

A. No, sir.

Q. You don't know anything about that?

A. I don't know anything about it except I know they knew we had large pay rolls, and it was rather voluntary on their part that they loaned the money there; it was turned right back to them.

Q. Mr. Fargo, please give us the size and the number of notes which you gave the Candee Company or Mr. Johnson for the Candee Company in January, 1896?

A. I think it was five $10,000 notes, sir.

Q. And they were extended or other notes given for them after they matured?

A. I do not think they went to maturity.

Q. Then the notes were extended before they matured?

A. I think there was some arrangement whereby $5,000 a month was to be paid in May, June, July or August, or something like that.

Q. When did that occur, that shifting or extension or whatever you may call it?

A. About the 1st of May, I think; that was a matter we called up for our own convenience.

Q. Did they all mature at one time?

A. All at one time.

Testimony of Charles E. Fargo.

Q. And then they were extended, some of them, beyond August, 1896?

A. Yes, sir.

Q. Now, those that were extended beyond August 6, 1896, were not paid?

A. No, sir.

Q. But all those that matured before August 6, 1896, were paid?

A. Yes, sir.

Q. Can you now state what portion of the $50,000 remained unpaid?

A. I should not know accurately except from your records.

Q. The statement you made this morning in answer to Mr. Beale's question was that the balance due on that account, on that $50,000 alone, was about $36,530—

A. I can explain to you a little bit further in regard to that; there may have been included in that $36,000 a small amount, less than $5,000, that accrued from the sale of rubber goods in the last two or three months, that had not been remitted.

Q. To whom?

A. The United States Rubber Company.

Q. The United States Rubber Company?

A. Those were months of very small rubber sales, and there may be in that amount, $36,530, a little of that included.

Mr. Beale: That is L. Candee & Company?

The Witness: That is L. Candee & Company.

Mr. Beale: You said the United States Rubber Company?

The Witness: Well, I did not mean the United States Rubber Company.

Q. You did not have any merchandise dealings with L. Candee & Company?

A. No.

Q. You got your goods from the United States Rubber Company?

A. From the United States Rubber Company.

Q. So that part of this $36,000 due L. Candee & Company was due on notes they held or for merchandise shipped to you by the United States Rubber Company?

A. No; I think not; if that is to L. Candee & Company, if that balance is to the L. Candee Company, I think it is the balance unpaid on the advance—I think it must be.

Q. Did not L. Candee & Company charge you something like $1,000 or $1,500 for discounting that paper?

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A. I think they did.

Q. That is on the five $10,000 notes which you gave the L. Candee Company in January, 1896?

A. I think they did; I have forgotten it, but I think they did.

Q. As a matter of fact they discounted that paper and charged you the discount?

A. I think they charged it to us.

Q. And you paid it?

A. It amounts to our paying it, yes.

Q. Mr. Fargo, in your affidavit filed by you, or by the two older companies, and made by you, on the hearing on the motion for a receiver, which affidavit you now have before you, you stated the following, "that the $50,000 advanced to C. H. Fargo & Co. by L. Candee & Company was largely used to reduce the indebtedness of C. H. Fargo & Co. The indebtedness of C. H. Fargo & Co. upon notes given to L. Candee & Company prior to January 6, 1896, in about the sum of $44,900, was subsequently paid in the due course of business, and the judgment note to secure such indebtedness was delivered up to affiant and cancelled by said Beale. On August 6, 1896, said C. H. Fargo & Co. was indebted to L. Candee & Company in the sum of $36,-000, being the balance, with interest, of the $50,000 advanced, on or about January 6, 1896, which said balance was secured by the judgment note upon which judgment was entered in favor of L. Candee & Company and against C. H. Fargo & Co., in the United States Circuit Court on that day." Is that statement true?

A. It is correct.

Q. Are those facts which I have just read and which are set out in your affidavit true?

A. Yes, sir.

Q. Look at the original judgment note which was given to L. Candee & Company and upon which judgment was entered in the Circuit Court for the Northern District of Illinois, on August 6, 1896, and state when it was dated?

A. January 6, 1896.

Q. Is it a time note or is it due on demand?

A. On demand.

Q. For what amount?

A. $51,500.

Q. What was the $1,500 for?

A. For interest.

Q. For what period?

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A. Six months.

Q. Was it your understanding that the loan was for six months?

A. I do not think there was any time specified, but it was to pay six months' interest; I understood it was not to be paid to that time.

Q. You had some troublesome times or irritating circumstances in connection with executing judgment notes. If the loan was for six months, why did you execute on January 6, 1896, a judgment note for moneys loaned you for at least the period of six months and make that judgment note payable on demand if the loan was in truth and in fact a six months' loan? Have you any explanation to give?

A. Yes, sir.

Q. What?

A. That I had just as much faith in Mr. Johnson's not using that note, whether it was a demand or six months—whether it was absolutely to run for six months before a warrant could issue on it.

Q. Do you now state that this judgment note concerning which I have been asking you was actually written out and signed on January 6th the day it bears date?

A. I think it was.

Q. Are you sure about it?

A. As to that exact date?

Q. Yes, sir?

A. No, sir; I cannot swear that it was done January 6th.

Q. Is it not a fact that that note was made and delivered after Johnson left Chicago in January, 1896?

A. I do not know whether it was or not.

Q. Have you any other reason to give why this judgment note did not express the two contracts with respect to the loan of $50,000, if it was a six months' note, other than the explanation you have given, namely, that your confidence in Johnson was unbounded?

A. I think a demand note—I have forgotten about the circumstances about that, sir.

Q. You can give no other reason?

A. I have forgotten about the circumstances—how it came to be a demand note.

Q. How it came to be a demand note instead of any other note?

A. No; I do not remember now.

Q. Do you wish to stand by your statement that you gave e demand note because you had boundless confidence in ohnson?

A. I think they insisted on a demand note; I think they anted a demand note.

Q. Did you struggle to have a time note so that the judgent note would correspond with what your understanding was the time for which the loan was to be made, or did you yield once when they insisted?

A. In all of our discussion we tried to have some arrangement ole whereby the note should not be used under certain circumstances, unless certain contingencies arose, and so forth nd so on, and when it was found to be almost impracticable to ake this binding, we concluded to give a six months' note, for thought it might as well be a six months' note as the other nd of a note.

Q. Are you saying that now, or do you recall that as being discussion had in January, 1896?

A. I remember that we had a discussion, too, as to the time. have forgotten the fact of the demand note until you spoke of I mean as for its being a demand note in preference to a time te, and I now remember it was discussed—time and other circumstances, and we concluded that it might as well be a deand note as anything else.

Q. Is the same thing true of the judgment note given to the nited States Rubber Company, bearing date Chicago, January 1896, for $140,000?

A. Yes, sir.

Q. And upon which the company entered judgment in the nited States Court on August 6, 1896?

A. Yes, sir.

Q. That is also a demand note?

A. Yes, sir.

Q. Was any time agreed upon between you and the United tates Rubber Company when you should pay that $140,000?

A. No, sir; I think not.

Q. Was that $140,000 actually due or past due on January 6, 96?

A. I think it was all due or past due at that time.

Q. But the $50,000 you borrowed January 6, 1896, was not ue?

A. No, sir.

Q. Was not to be due for six months?

Testimony of Charles E. Fargo.

A. I do not know that six months was stipulated. I know w paid interest on it expecting it to run six months if necessary.

Q. And that this is the interest which was included in th original note?

A. Yes, sir.

Q. You gave two judgment notes payable on demand, one t the United States Rubber Company and the other to L. Carde & Company. You now say that the matter of giving notes demand was discussed and that it was difficult to determine b precise agreement when they should be used and therefore n written agreement was made. Is that correct?

A. Yes, sir.

Q. Mr. Fargo, who was to be the judge of the time when thes judgment notes were to be used—yourself or Mr. Johnson?

A. If I remember rightly it was Mr. Beale.

Q. Have you got with you one of the two judgment note dated August 5, 1896, which was given by your company to th Metropolitan National Bank, and afterwards paid by your com pany, conveying to the bank the Dixon property?

A. Yes, sir.

Q. Please produce it?

(Note produced.)

Q. Who signed that note?

A. C. H. Fargo & Co., by myself as president.

Q. On what day?

A. August 5, 1896.

Q. Was this note delivered to the bank?

A. It was.

Q. What I mean by delivery is this: Was this piece of pap on which this note is partly written and partly printed actuall delivered into the manual custody of any officer of the bank?

A. It was delivered to Mr. Follansbee.

Q. Mr. Follansbee, the attorney for the bank?

A. Yes, sir.

Q. When did it get back into your possession as president the Fargo Company?

A. Either August—I think August 6th, sir.

Q. Either August 5th or 6th?

A. Either August 5th or 6th.

Q. Was it redelivered to you as president of the Fargo Com pany?

A. Personally delivered to me by Mr. Follansbee.

Testimony of Charles E. Fargo.

At what time, with respect to the delivery of the two ...s conveying the Dixon property?

At the time the two deeds were given.

Then you, on behalf of the Fargo Company, delivered the deeds, and Mr. Follansbee, on behalf of the bank, delivered judgment note to you in payment?

Yes, sir.

In payment of the property described in the two deeds?

Yes, sir.

Who canceled the signatures?

I did.

As they now appear canceled?

Yes, sir.

Mr. Newman: I offer this note in evidence.

Introduction of Complainant's Exhibit 6.

The Master The name is received and marked Complain-'s Exhibit No. 6. (See page 210.)

Mr. Newman: Mr. Fargo, have you any objection to leaving canceled $25,000 judgment note in our possession tem-arily?

I do not know of any unless it is necessary for me to have

We will return it to you.

You will notice I canceled the upper signature to it, the er signature, to-day.

The lines were drawn through the upper signature to-day?

Yes.

How about the cancellation of the warrant of attorney? at is canceled in black ink—when was that done?

I do not remember exactly when it was done; the other s done when I took it out of my box.

That is the signature to the note proper; the name appears h two lines drawn through it, and you drew those two lines day?

A. I did.

Q. The same signature appended to the warrant of attorney, nexed to that note, appears with two lines drawn through it; en were those drawn through it?

A. I think immediately after being handed to me.

Q. Handed you by Mr. Follansbee?

A. Handed to me by Mr. Follansbee.

Mr. Newman: I think that is all.

Evidence taken before Master.

Re-direct Examination continued by Mr. Tenney.

Testimony of Charles E. Fargo.

Q. The indebtedness of your company, Mr. Fargo, of the H. Fargo Company to the Pfister & Vogel Leather Company for goods purchased on credit after the 6th day of January, 1 was it not?

A. Yes, sir.

Q. The indebtedness which is now owing?

A. Yes, sir.

Q. It is a fact, is it not, that all these goods were purcha between January 7th and June the 26th, 1896, and that th amounted to $20,504.32—that they were all purchased—that t account was balanced very nearly up to April 7, 1896?

A. It is a fact that the total purchases were between Ja ary 7th and June 26th, $20,504.32—oh, you want to verify amounts?

Q. Yes; I do.

A. I cannot verify the amounts without the books. I s posed this was true. I know the amounts were about $2 but as to the exact amount I cannot tell, if that is what you wa

Q. That statement you have in your hands is their st ment?

A. It is.

Q. And it is a fact that you made some small payme reducing it down to about $17,500?

A. Yes, sir.

Q. Then in July, about the 23d of July, you gave them on count of the total sum due a note of the company for $15,000?

A. Yes, sir.

Re-cross Examination by Mr. Beale.

Q. The by-laws of your company, Mr. Fargo, provide fo annual meeting of the stockholders in December; was any nual meeting of the stockholders held in December, 1895? T is no record of it?

A. I think not.

Q. There was none, if there is no record of it in the re book?

A. No, sir.

Q. The annual meeting was held on January 9th?

A. Yes, sir.

Q. You say that the new indebtedness incurred after Ja

ary 6th was probably approximately $125,000. That indebtedness was to a considerable extent incurred to people to whom you also paid a good deal of money during that time on past indebtedness, was it not?

A. Very largely.

Q. In other words, so far as your figures of $125,000 is concerned, it might be that you paid them more in fact than $125,000 during that time?

Mr. Newman: Objected to because I do not want the witness to guess. You say "it might be;" well, of course, in the range of might be's.

Q. Do you remember about it?

A. In stating that $125,000, I simply stated that as what I thought it would amount to—it was not an exact figure, and $125,000 merely that I got it by proportion, and I think nine-tenths of our indebtedness was incurred after January.

Q. Fully nine-tenths of the indebtedness which existed in August, 1896?

A. Fully nine-tenths of the indebtedness which existed in August, 1896, was incurred after January, and we had a larger indebtedness on January 6th than it was on August 6th, which was paid entire, possibly, not to the same men, but largely to these same men.

Q. When the arrangement was made in January—the 6th, or about the 6th, of January, with Mr. Johnson, it was your original desire and attempt, was it not, and I think you have testified so, to have a definite future limit fixed, within which the judgment notes should be surrendered, if your company ran on all right—at some time in the fall or summer of that year?

A. Yes, sir.

Q. Now, recalling the fact that six months would have been about July 1st, is it not your recollection at this time that it was fixed at July 1st?

A. I think very possibly it was.

Q. So that giving the judgment notes was intended to be practically a six months arrangement on the assumption you could get your company through all right, through its embarassments?

A. I think it was.

Q. Your immediate and pressing necessity at that day, January 6th, was for $10,000, wasn't it?

A. Yes, sir.

Testimony of Charles E. Fargo.

Q. And Mr. Johnson advanced that and went away and left the whole matter to be arranged by me?

A. Yes, sir.

Q. The judgment notes were drawn in my office, were they not?

A. Yes, sir.

Q. Do you not remember that I was the one who suggested or who expressed a wish to have the notes demand notes rather than judgment notes, or at least have them so drawn—the warrant of attorney so drawn—that judgment might be entered upon them at any time in case the proper contingencies arose?

A. Yes, sir.

Q. So that the making of the notes demand notes, and the drawing of the warrant of attorney, authorizing judgment at any time after the date of the notes, was really my arrangement, suggested to you, wasn't it?

A. Yes, sir.

Q. Do you remember that there was an error made in my office in the amount of one of the notes when they were drawn? $51,500—that interest question?

A. (No answer.)

Q. Perhaps if I ask you some more questions it will refresh your recollection. What were you to get from L. Candee & Company?

A. $50,000.

Q. Were not you to get $51,500?

A. No, sir.

Q. Did the note draw interest—does it not at 6 per cent.?

A. Yes, sir.

Q. And $1,500 would have been six months interest?

A. Yes, sir.

Q. And in drawing the notes then we have added the interest to the principal and at the same time made the note draw interest?

A. I remember.

Q. Wasn't there an error in drawing that note?

A. Yes, sir.

Q. And I called your attention to that after it was done, did I not?

A. Yes, sir.

Q. It was a mistake in my office and attracted my attention and I called it to your attention?

A. Yes, sir.

Testimony of Charles E. Fargo.

Q. That was subsequently corrected in working out, wasn't it, when the judgments were entered? As we took judgment for whatever we understood to be due?

A. I don't know about that.

Q. Originally it had been intended that the judgment note should be sent to the rubber company, wasn't it, and that we were to formulate a written agreement?

A. Yes, sir.

Q. And that arrangement was changed, that there should be no written agreement, and the judgment notes should be left with me?

A. Yes, sir.

Q. And so far as you know, they were left with me, were they not?

A. Yes, sir.

Q. I ultimately surrendered one of them to your company?

A. Yes, sir.

Q. The one not surrendered was the judgment note for $44,900 or about that amount, was it not, representing the indebtedness which existed to the Candee Company on January 6, 1896, and before the advance of $50,000?

A. Yes, sir.

Q. The special purpose of having the proposed written agreement on January 6th was to prevent the necessity of any individuals judging when the contingency had arisen, and we intended to have it enumerate the conditions under which we should be entitled to enter judgment?

Mr. Newman: I object to the question on the ground that it is not cross-examination and that it is not relevant or material, as it relates to a matter that was never consummated, and calls for the witness' mere conclusion, opinion or fancy.

Mr. Beale: Let me ask another question, abandoning that.

Q. You were asked by Mr. Newman who was to be the judge as to when judgment should be entered, and you said you thought I was to be. I am stating that correctly, am I not?

A. Yes, sir.

Q. Originally it had been contemplated to draw an agreement which would specify just the contingencies on which judgment should be entered, had it not?

A. Yes, sir.

Q. And among others if an attachment should be levied on your firm and you were not able to release it?

A. Yes, sir.

stimony of arles E. Fargo.

Q. Or you allowed judgment to be taken, or anybody allowed judgment to be taken against your corporation?

A. Yes, sir.

Q. But we finally abandoned that because of the difficulty of specifying all the possible contingencies?

A. Yes, sir.

Q. And you left it to the discretion of the rubber companies and myself?

A. Yes, sir.

Q. Mr. Sadler had consented August 1st to your obtaining $10,000 from the Metropolitan National Bank and if necessary giving the Metropolitan Bank judgment notes to enable your company to tide over possible embarrassment in August and to help the company continue in business, had he not?

A. Yes, sir.

Q. As a matter of fact that $10,000 was never obtained for that purpose?

A. It was not applied to that purpose.

Q. That is practically what I mean; you did not get the $10,000 precisely in accordance with the terms of Mr. Sadler's consent?

A. That is a fact.

Q. And Mr. Sadler's consent then did not cover the obtaining of the $10,000 precisely as it was obtained, and for the purpose for which it was obtained?

A. No, sir.

Q. Mr. Newman asked you, as I understood him, about Mr. Sadler's consent for these judgment notes for the $10,000 to be applied by the corporation for the benefit of yourself and brothers. As a matter of fact, did Mr. Sadler know anything about these particular judgment notes, to the obtaining of that—or rather, had Mr. Sadler consented to these particular judgment notes and the obtaining of $10,000 for that particular purpose?

A. No, sir.

Q. But after August 1st, and upon later developments, you concluded to get $10,000 for another purpose?

A. Yes, sir.

Q. Which was different from the purpose to which Mr. Sadler had consented?

A. Yes, sir.

Q. As a matter of fact, Mr. Fargo, so far as you are advised and know, whatever assent there was on behalf of the rubber

panies to the ultimate obtaining of this $10,000 as it was ob- Testimony of Charles E. Fargo.
ned, was a consent through my office, wasn't it?
A. Yes, sir.
Q. You did not communicate directly with Mr. Sadler or any
er business representative of the rubber companies for the
rpose of obtaining this $10,000, for the purpose for which you
ed it?
A. No, sir.
Q. Let me ask you another question in there. Are you sure
at you mentioned in my office on August 5th the fact that a
e had gone to protest, or would go to protest that day, before
u had communicated with Mr. Keith also on that day about
taining the $10,000?
A. I am very sure that was the case.
Q. That you communicated with my office first on the subject
ore you talked with him?
A. I think I did.

LBERT E. PORTER, called as a witness on behalf of the com- Testimony of Gilbert E. Porter.
plainant, being first duly sworn, was examined in chief by Mr. Newman, and testified as follows:

Q. What is your full name?
A. Gilbert E. Porter.
Q. What is your occupation?
A. Lawyer.
Q. Are you connected with the firm of Isham, Lincoln & ale?
A. I am.
Q. Were you so connected during the whole of the year 1896?
A. Yes, sir.
Q. And prior to that time?
A. Yes.
Q. Mr. Porter, the firm of Isham, Lincoln & Beale had charge the book accounts of the Fargo Company and bills receivable d choses in action generally which had been assigned by the rgo Company to the United States Rubber Company on or out August 6, 1896?
A. Yes, sir.
Q. And your firm was collecting the accounts after the as- nment on behalf of the United States Rubber Company?
A. They were.

Testimony of Gilbert E. Porter.

Q. After Mr. Bishop was appointed receiver in this cause did your firm continue to collect the accounts?

A. They did.

Q. Please state the total amount of moneys which had been collected and received in every way, directly and indirectly, upon the accounts, choses in action, bills receivable, and so forth belonging to the Fargo Company and turned over by that company to the United States Rubber Company on August 6, 1896, and state the total amount collected and received up to the present time?

A. Prior to the qualification of Mr. Bishop as receiver, on February 26, 1897, there was a total net amount collected of thirty-four thousand eight hundred and thirty-nine dollars and thirty cents ($34,839.30); since Mr. Bishop qualified our firm has collected eight thousand one hundred and seventy-three dollars and fourteen cents ($8,173.14). Of the latter amount, two thousand one hundred and ninety-five dollars and seventy-six cents ($2,195.76) was received from Messrs. Cratty Bros., Jarvis & Cleveland as proceeds of certain collections that they had made upon accounts that had been placed in their hands prior to August 6, 1896, by C. H. Fargo & Co.

Q. Placed with them for collection?

A. Yes.

Q. Now, please state the total amount that has been collected and received upon all the books accounts, bills receivable, choses in action of every kind and nature up to the present time?

A. Forty-three thousand and twelve dollars and forty-four cents ($43,012.44). I desire to say that this total includes a few items which were not received in collection of the book accounts, for example, the receiver sold some odd shoes some time ago that he had on hand and he got one hundred and sixty dollars ($160) for them; that amount is figured in this sum I have just given you.

Q. But the amount which you have just named is the only element entering into the total sum of forty-three thousand and twelve dollars and forty-four cents ($43,012.44) that is not derived from accounts, bills receivable and choses in action?

A. No; there are two or three items of that kind, perhaps more, but I cannot remember them.

Q. What is the total amount of those items?

A. Well, the sum I have given you is the total amount of receipts from all sources, of every kind and description, from book accounts and everything else.

. You do not quite mean that?
. Yes; I mean that is what we have received from the
ets of C. H. Fargo & Co. from all sources.
Ir. Beale: Outside of the twelve thousand three hundred
lars ($12,300).
he Witness: That did not come to us; that went direct to
Bishop. I am speaking of moneys received direct by Isham,
coln & Beale.
. Your statement refers to moneys that went to Isham,
coln & Beale?
. Yes, sir.
. Can you give the items accurately—the moneys received
n outstanding accounts?
. Yes. I can by further examination of the books of account.
annot do so now.
. Will you please do so?
. Yes, sir.
. What would you now say would be the total amount of
se foreign items, such as you have referred to, such as the
of some lots of boots and shoes, and items of that kind,
tly speaking not accounts?
. I do not think they will amount to more than $500 or $600.
. That would be the outside?
. Yes; but I cannot be accurate about it until I have ex-
ined the books.
. After Mr. Bishop was appointed receiver did the firm of
am, Lincoln & Beale continue in the collection of the accounts
they had endeavored to collect them prior to the appoint-
t of Mr. Bishop as receiver?
. Yes.
. What efforts did the firm of Isham, Lincoln & Beale make
educe these accounts to money, that is, what efforts did
make to collect them?
. Well, we employed a man and a stenographer, a man who
familiar with the collection of accounts.
Ir. Beale: Just in a general way, state.
. (Continuing) We made every effort—we have practically
austed all efforts in collecting these accounts.
. Were you diligent in doing so?
. Yes, sir.
. Did you employ all means and agencies known in that
of work?
. Yes.

Testimony of Gilbert E. Porter.

Q. Did you leave anything undone to collect the accounts?

A. Not that I know of.

Mr. Beale: We have not brought any suits, because th would have been a waste of money.

Q. Now, Mr. Porter, what was the total face value of accoun choses in action and so forth, as they appeared on the books the Fargo Company on or about August 6, 1896?

A. At the time the United States Rubber Company file answer in this suit, I think October 6, 1896, we had statement prepared by Mr. Steele, former cashier of C. Fargo & Co., and who at that time was employed in conne tion with the collecting of the accounts; he went over all t accounts presumably and made the figures he set forth in th answer, and the amount of the live accounts aggregated abo sixty-nine thousand five hundred dollars ($69,500); old and sta merchandise accounts aggregated about twenty-seven thousa and forty-two dollars ($27,042); old accounts for money loan aggregated about thirty-one thousand nine hundred and fif seven ($31,957), making a total of accounts of one hundred a twenty-eight thousand four hundred and ninety-nine dolla ($128,499). We supposed at that time that this total was t face value of all the accounts shown upon the books of C. Fargo & Co. I have never footed them up myself and I cann state positively that that total is correct.

Q. Does that total of one hundred and twenty-eight thousa and some odd dollars include all bills receivable and choses action of every kind?

A. We supposed it did—I suppose it does.

Q. You used the word accounts, but you use it in a gene sense, to include everything that is payable?

A. Yes.

Q. I mean everything that is receivable?

A. Yes.

Q. That is used to cover all accounts receivable?

A. Yes.

Q. The ordinary book accounts, bills receivable, and so forth

A. Yes; but there were very few bills receivable.

Q. Did you ever call Mr. Fargo's attention to the discrepanc in the face value of the accounts receivable and bills receivab as they appear in the answer, and to which you have ju directed our attention, and the claim which he made that t accounts receivable and bills receivable amounted to about tw hundred and fifty thousand dollars ($250,000)?

A. I do not remember that I ever did. Testimony of Gilbert E. Porter.

Q. Do you remember the fact that Charles E. Fargo was in the court room when the answer of the United States Rubber Company was read, and the figures which you have just given us were read to the court, do you not?

A. Yes; he was there at that hearing.

Q. Did he ever demur to these figures, or challenge them in any way?

A. Not that I know of; I do not know that the subject was mentioned to him.

Q. Now, what other moneys have been received?

A. By whom?

Q. By the receiver? Or what moneys were produced by the other assets of the Fargo Company?

A. Well, the stock of merchandise at the corner of Quincy and Market streets was sold by the United States marshal under two executions in favor of the United States Rubber Company and L. Candee & Company for sixty-five thousand dollars ($65,000), and after paying costs, expenses and preferred claims of labor creditors, and salaries, there was left in the hands of the United States marshal the sum of fifty-eight thousand nine hundred and fifteen dollars and eighty-five cents ($58,915.85), which sum was turned over to the receiver. The personal property in the factory at Dixon, Illinois, was bid in at a sale, under the same executions by the United States Rubber Company for fifteen thousand five hundred dollars ($15,500), but this bid was never consummated, and the same property was thereafter sold by the receiver for twelve thousand three hundred dollars ($12,300), after a most diligent effort to obtain more, and under an order of the court. This sum of twelve thousand three hundred dollars ($12,300) was also paid over to the receiver.

The amounts realized from the sale of the personal property and the collection of the accounts, as above enumerated, namely $43,012.44, is all the money that has been received or realized from the assets of the Fargo Company by Isham, Lincoln & Beale; and this amount includes $427.98 which was not collected upon accounts, but was received by Isham, Lincoln & Beale in connection with other matters. The sum which I have stated as being the total amount collected from accounts and so forth is the total gross sum collected by us, without deducting any disbursements or charges for our services.

Q. Mr. Porter, at the sale made by the United States marshal, is it, or is it not a fact that the property brought all that

Testimony of Gilbert E. Porter.

the United States Rubber Company and its agents thought it was fairly worth, and that the price of sixty-five thousand dollars ($65,000), paid by "The Fair," at the marshal's sale, was considered a fair price by the United State Rubber Company?

A. Well, I do not know that I can answer that by yes or no, Mr. Newman. The United States Rubber Company was represented at that sale and did not bid over sixty-five thousand dollars ($65,000).

Q. Did the United States Rubber Company have its representative at the sale?

A. Yes, sir.

Q. Was it an active bidder until the last bid of sixty-five thousand dollars ($65,000) was made?

A. I think so; yes, sir.

Q. Did the United States Rubber Company refuse to go beyond that bid?

A. No; I do not know that they refused; they did not make any further bid.

Q. Well, they had the opportuinty to make another bid, beyond sixty-five thousand dollars ($65,000)?

A. Yes; I think so.

Q. Is it not a fact that they declined to bid over sixty five thousand dollars ($65,000)?

A. No more than what might be concluded from the fact that they did not bid over sixty-five thousand dollars ($65,000). I did not hear any declination made by them.

Mr. Beale: I admit that the United States Rubber Company refused to bid any higher at the sale.

Q. The bidding was quite active, was it not, Mr. Porter, and there were a large number of Chicago bidders there bidding?

A. Well, there were perhaps; there were several persons bidding when the property was offered in small lots. When it was offered as a whole, I believe that the Fair and the United States Rubber Company, or its representatives, were the only bidders.

Q. Were not the Gans Wrecking Company active bidders?

A. I will not be certain that it was not a bidder, but my impression is that the rubber company and The Fair were the only two bidders after the property was offered as a whole.

Q. It is a further fact that the bids in parcels were less than the total bid, is it not?

A. Yes; the aggregate of bids in small lots.

Q. Were less than what the total property finally sold for?

A. Yes.

Complainant's Evidence—Testimony.

Testimony of Gilbert E. Porter.

Q. And when the marshal found that the total bids in parcels were less than a certain figure, he put up the property in bulk?

A. Well, he put up the property as a whole, after the bids in small lots were taken, and as the greater sum was offered for the property as a whole, than the aggregate of bids in small lots, he sold it to The Fair, who offered the largest sum for the property as a whole.

Q. The sixty-five thousand dollars ($65,000)?

A. Yes.

Cross-Examination by Mr. Beale.

Q. Do you remember whether you have ever had any conversation at all with Mr. C. E. Fargo on the subject of the apparent discrepancy in these amounts, between the sum that he stated they were and the sum we found them to be?

A. I may have had some conversation but I do not recall the purport of it now.

Q. Have you had much conversation on any subject with Mr. Fargo since the failure?

A. I do not think I have spoken with him more than once or twice, and then only casually.

Q. Then only for a few moments?

A. Then only for a few moments.

Q. Do you know whether he has been in our office to any extent since the failure?

A. No; he has not.

Q. There has been no extended conferences or conversations had, either by you or any person in our office, so far as you know?

A. No, sir.

Testimony of Charles H. Hughes.

CHARLES H. HUGHES, called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Newman, and testified as follows:

Q. What is your full name?

A. Charles H. Hughes.

Q. Where do you reside?

A. At Dixon, Illinois.

Q. What is your occupation?

A. Cashier of the Dixon National Bank.

Testimony of Charles H. Hughes.

Q. How long have you filled that office?

A. For five years, I think.

Q. Were you in active discharge of your duties during the year 1896?

A. Yes, sir.

Q. Did your bank ever have any business transactions with C. H. Fargo & Co., a corporation?

A. Yes, sir.

Q. When?

A. During all the time that I had been cashier of the bank.

Q. Please state in a brief general way what the character of your transactions were.

A. They kept an account with our bank, which was principally used for paying their labor at the factory. They would send out a check to us and deposit it, deposit the proceeds of the check and then draw checks to pay the labor at their factory. That was the principal business they had with the bank; they usually had a very small balance between labor pay days, which occurred every two weeks; they would check out about all the money they had usually, and then in two weeks get another remittance to pay their labor.

Q. Then practically all you did was to give them the use of your bank to pay their labor rolls?

A. Yes, sir.

Q. It was not what is ordinarily called an active bank account?

A. No.

Q. Did your bank ever lend to the Fargo Company any money?

A. Yes, sir.

Q. Tell us when was the first loan made.

A. The first loan was made in March, I think on March 4, 1896; the note was dated March 3, 1896, and we received it and placed the proceeds to their credit on March 4th.

Q. What was the amount of that loan?

A. Three thousand five hundred dollars ($3,500).

Q. Now, will you please state in your own way how your bank came to lend the three thousand five hundred dollars ($3,500) to the Fargo Company, and also whether any subsequent loan was made, giving to us the history of that transaction, together with what was said and what was done?

A. I think about the middle of February, 1896, Mr. Fargo and Mr. Joslyn came to the bank—this was, I think, the Fargo called

Testimony of Charles H. Hughes.

nk Fargo—it was the only one I ever had any dealings with; I understand it was Mr. Frank Fargo, and Mr. Joslyn, erintendent of the factory. They came to the bank and ed to have an interview with me, and in that interview they ted their object was to borrow money. They wanted to bor- fourteen thousand dollars ($14,000). This money they claimed ld go to pay their help; their pay roll they said would be ut three thousand five hundred dollars ($3,500) every two ks, and they wanted to borrow the amount sufficient to make ir pay roll, which would be three thousand five hundred dol- s ($3,500), and give a note for that amount for sixty days; they uld borrow that every two weeks until it amounted to fourteen usand dollars ($14,000); that would be four pay days; they nted four pay days taken care of in that way. They repre- nted to me that their object in doing this was to increase their siness at Dixon. They had a line of shoes which they called r a line of goods which they called their "ball bearing shoes" ncipally, and they said they were making a great deal of money it, on this line of goods, that they were having orders which y were not able to fill—they were only able to fill a small rcentage of orders that they were then receiving very ularly and that they could fill only about twenty-five r cent. of the orders which they were receiving; that they re making a good deal of money on this line of goods and nted to supply the trade and fill their orders as far as sible, and that in order to do this they wanted their own ney—all the money which they could command—to put into rk, and they wanted the banks at Dixon to loan the money ich would go into labor during that term, which would cover e season's output. They would manufacture during that iod which they would cover by these four loans, which would er the period during which time the demand would exist—you w the season would close about that time. They represented at during this time they would manufacture, provided we uld make them this loan, they could manufacture about uble the amount of goods and could employ about double the mber of hands; that the money would be paid out in Dixon, d would, therefore, benefit Dixon, and for that reason they ceived the idea of borrowing the money there. They thought would perhaps be willing to loan them the money on account the benefit Dixon would derive from it, on account of the reased number of hands they would employ. They stated if y made this arrangement they would build an addition to

Testimony of Charles H. Hughes.

their factory, and this would enable them to increase their business contracts. I told them, after some further talk, in relation to their condition—they stated that their business was in good shape; that they never had been making so much money they were making on this special line they were manufacturing then; I asked them if the Chicago end of it was in good condition they said it was, and that they were doing well; that it was in good shape; and I asked them what security they would give and they said they would simply give the company's note: that it was all they were required to give where they borrowed; that they borrowed in Chicago, and that was all the banks required of them, their company's note. I then stated to them that it would be impossible for us to make them the loan, to make the loan to that extent, because we were only allowed by law to loan ten per cent. of our capital, which would only be ten thousand dollars ($10,000), and could not, therefore, make a loan of fourteen thousand dollars ($14,000), and that I would not say to them that I could make any loan to them at all without consulting first Mr. Ayres, our president, and I would see Mr. Ayres and possible, see some of our other directors and let them know. Then he said something about having—my recollection is not that he said he had had some talk with an officer of the other bank.

Q. What bank?

A. The City National Bank of Dixon, and that he thought perhaps they could borrow some money there, but as they kept their account with us he, of course, preferred to borrow from us as they might, if they went there to borrow money, be asked to keep an account there, and that it would be more desirable to borrow the money where they kept the account. I then said so far as the account was concerned, it would make no difference; if the other people were willing to make the loan that we would have no hard feelings toward them if they changed their account or kept an account at the other bank. At the same time I said to Mr. Fargo, their account was of no material benefit to the bank; that they simply deposited sufficient for labor pay rolls and drew it out at once, and that directly it was of no great benefit; that it might be a slight benefit indirectly, but we would not have any feeling if they should see fit to change their account, if other people loaned them the money. Then he stated if I had that feeling in regard to the matter and would be perfectly willing, perhaps they might make an arrangement with both banks, and borrow seven thousand dollars ($7,000) the

Testimony of Charles H. Hughes.

d seven thousand dollars ($7,000) of us, and wanted to know ether I thought we would do that. I said if they went to see Eells—

Q. Who is Mr. Eells?

A. Mr. Eells is president of the other bank—manager of the er bank—that I would let them know when they came back; t I first wanted, before we made any loan, before we made y arrangement, I wanted to go and see Mr. Ayres and talk it er with him.

Q. Who is Mr. Ayres?

A. President of our bank. They went to see Mr. Eells and I nt to see Mr. Ayres and had a talk with him in relation to it, d when I got back they returned from the other bank with the rmation to me that the other people were willing to loan, to ke them this loan of seven thousand dollars ($7,000) and take e of it, that is one-half; that they were perfectly willing to do t. Mr. Fargo said to me, one of the officers of the other bank ked them why they did not come there first; that they would e been willing to have given them all of this loan, taken e of the whole fourteen thousand dollars ($14,000). I told m if they wanted to do that we were willing, but he said he ferred to divide it, and as long as it was satisfactory to both nks, and thought it much better for them. So then I went h him to see Mr. Ayres, and they made practically the same tement to Mr. Ayres in relation to their business affairs and ir reasons for asking this loan that they had to me. After y got through, I said to them, I want to speak to Mr. Ayres a nute, and will come right up to the bank. I remained and ked with Mr. Ayres a few minutes and we concluded that we uld make the loan. I said to Mr. Ayres this, that I wanted ask Mr. Fargo two questions before I made the loan; that s was a loan without security; that we had no collateral, thing but this company's note, and I did not want—did not e to consider a loan which would run indefinitely, that I uld prefer that if we made these loans, they would take up se notes when due and make only temporary loans. I asked hey would pay these two notes when they fell due, thirty- e hundred dollars ($3,500) each, and the other question was ether they had any judgment notes outstanding, or any rtgages, or anything that might embarrass them in any way, complicate their business affairs, and Mr. Ayres replied I uld ask them these questions. So when I got back to the nk, Mr. Fargo was waiting; Mr. Joslyn, my recollection is, had

Testimony of Charles H. Hughes.

gone away; Mr. Fargo was waiting and I asked him these questions, and he replied to the first that they would pay the notes as they fell due, that they expected to do that; would be prepared to do that; and to the latter question he replied that they had not given any judgment notes; that they had no judgment notes outstanding; had no mortgages or anything of that sort. And we made them the loan.

Q. What is that last?

A. They had no judgment notes outstanding, or no mortgages or anything of that sort—no complications of that kind. I think I stated to him that Mr. Eelis wanted the first note—that they give us the first note when the orders were made—when the factory checks were made. I told him it was all right; that we would be satisfied if we did not see our first note till the 4th. This was about two weeks after this; this may have been a few days before, more or less, when we got the first note. The first note we got was on March 4th, dated March 3d. The note came to us the morning of March 4th, 1896.

Q. Your bank then made the loan of $7,000?

A. Yes, sir; we gave them credit to the amount of the notes, thirty-five hundred ($3,500) dollars, less the discount, and they checked it out—paid their employes.

Q. When did these notes mature?

A. The first note matured in sixty days—about four weeks from that time. I have a memorandum of the time we made this loan; the first note was dated March 3, 1896, and we discounted it on the 4th of March, 1896. The second note we discounted for them was dated April 1st, and discounted on the same day, April 1st, 1896. The third note was made on June 2, 1896, and discounted on the same day. The first two notes were paid on maturity; the last note is the note now in litigation.

Q. How much is that?

A. The principal was three thousand five hundred dollars ($3,500).

Q. That has not been paid?

A. No, sir.

Q. Give the date of maturity and amount of the last unpaid note, so that it may stand as proof of your claim without further trouble?

A. On the 16th day of August, 1896, the corporation of C. Fargo & Co. made, by its proper officers—the way it is worded here—and executed and delivered to us a judgment note for the sum of three thousand five hundred dollars ($3,500); at that time the

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Testimony of Charles H. Hughes

ther note was surrendered—the note given June 24, 1896, surendered to them, and they gave their judgment note.

Q. Did you or anybody connected with your bank ever learn hat the Fargo Company had at the time this interview took lace between you and Frank Fargo, on behalf of the Fargo Company, any judgment notes outstanding?

A. No, sir; not until we read it in the papers after their ailure.

Q. That was the first knowledge your bank had that Mr. Fargo's statement to you was not correct?

A. The first knowledge I ever had of it; I do not think any officer, or anyone connected with our bank, ever knew it.

Q. How much is there now due and unpaid and owing by the Fargo Company to your bank?

A. The amount on the 17th day of August, 1896, was three thousand six hundred and seventy-five dollars ($3,675). That s the amount of our claim. The interest on the three thousand ive hundred dollars ($3,500) at that time, the interest and costs, amounted to three thousand six hundred and seventy-five dol ars ($3,675).

Mr. Follansbee: Mr. Hughes, did you present this claim be ore the court and have it allowed in a suit to establish some mechanic's lien against the property at Dixon?

The Witness: No, sir; that I know of.

Cross-Examination by Mr. Beale.

Q. Has your bank ever received anything on account of this indebtedness by legal proceedings or otherwise?

A. No, sir. I may say this, that we have now a small balance to their credit at our bank. We never have applied it in any way.

Q. What is the amount of it?

A. A trifle over one hundred dollars ($100). It is there. Mr. Bethea informed us we could apply it. No one has ever called for it.

Q. Were any representations ever made to you, or so far as you know, to any officer of your bank, by anybody representing the United States Rubber Company, or representing L. Candee & Company, as to the financial condition of C. H. Fargo & Co. or as to their having any judgment notes outstanding?

Testimony of Charles H. Hughes.

A. No, sir. I never had any conversation with anybody in relation to it, except Mr. Fargo himself.

Q. With Mr. Frank Fargo?

A. With Mr. Frank Fargo.

Testimony of Jason C. Ayers.

JASON C. AYRES, called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Newman, and testified as follows:

Q. What is your full name?

A. Jason C. Ayres.

Q. What is your business?

A. I am president of the Dixon National Bank.

Q. Were you filling that office and discharging the duties of it the whole of the year 1896?

A. Yes, sir.

Q. Do you remember that some time in March, 1896, Mr. Frank Fargo, on behalf of the Fargo Company, called upon you in company with the cashier of your bank, Mr. Hughes?

A. I think it was during the first half of February that they called.

Q. In the year 1896?

A. Yes, sir.

Q. Will you please state what occurred at that interview?

A. The proposition was made that our bank should make them a loan. Mr. Fargo stated that they were having a great run on a bicycle boot, and they were unable to fill their orders; they had advertised it extensively and were making a great deal of money out of it, and that if they could use the money which they had in purchasing stock—put $10,000 or $15,000 in stock—it would mean a very large increase of output. If we in connection with the other bank would loan them the money to pay their pay rolls during the manufacturing season they could greatly increase their output, as it would enable them to employ much more help, and they would pay out more money for labor in our town, and in that way would be a benefit to the town and people. Mr. Fargo stated, I think I have stated, that they had advertised it extensively and that the demand was greater than they had expected, and so they very much desired to increase their output and make the big money there was in it.

Q. What further was said, if anything, about the condition of the Fargo Company?

Complainant's Evidence—Testimony.

Testimony of Jason C. Ayers

A. Well, there was not a great deal said in the interview in regard to their condition, only this, that they were getting along in good shape—making money.

Q. Prosperous?

A. They were prospering and could make a great deal more with a little timely assistance.

Q. Did you have any talk with Mr. Hughes at that interview or shortly after the interview closed, with Mr. Hughes, the cashier of your bank, as to what questions should be asked Mr. Fargo before the loan was made?

A. Yes, sir.

Q. What was that?

A. If they had given out—

Mr. Beale: I do not think this is competent; I will reserve an objection in there.

Q. Well, did you and Mr. Hughes agree at the close of that interview that certain questions should be put by Mr. Hughes to Mr. Fargo relative to his company?

A. We did.

Q. Were you present at the subsequent interview with Mr. Fargo which occurred at the bank?

A. No, sir; I was not.

Q. And you do not personally know what questions, if any, were put by Mr. Hughes to Mr. Fargo, at the bank?

A. I do not.

Q. Did you personally have any interview with Mr. Fargo other than the one to which you have referred?

A. Not that I recall.

Q. At your first interview which was participated in by yourself, Mr. Hughes, Mr. Joslyn, the superintendent, and Frank Fargo, was there anything said or asked concerning the business in Chicago? What further—what occurred?

A. I do not think that I asked any question in regard to that further than in connection with their statement that their business was in a flourishing condition.

Q. Did that relate solely to the factory or to the business generally?

A. To the business generally.

Testimony of Samuel C. Eells.

SAMUEL C. EELLS, called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Newman and testified as follows:

Q. What is your full name?
A. Samuel C. Eells.
Q. Where do you reside?
A. At Dixon, Illinois.
Q. What is your business?
A. President of The City National Bank.
Q. Of Dixon?
A. Of Dixon.
Q. Located at Dixon, Illinois?
A. Located at Dixon, Illinois.
Q. Did you fill that office during the whole of the year 1896?
A. Yes, sir; I did.
Q. Were you the active manager of the bank?
A. Yes, sir.
Q. During the year 1896?
A. Yes, sir.
Q. During the year 1896 did Frank Fargo come to you for the purpose of making a loan?
A. Yes, sir.
Q. Please state what occurred between you and Mr. Fargo relative to that matter?
A. I do not know as I can detail it.
Q. Do the best you can—state in your own way?
A. There was a good deal of conversation connected with the transaction, and he made a request for a loan of ten thousand ($10,000) dollars, divided into three payments, three notes, stating that he wanted to provide for three payments of labor at the factory, at the different intervals of the pay, and there was a good deal of conversation in connection with the matter, about the deal, and on his business, too, the prosperity of his business, that I cannot detail to you.
Q. What did he say about it?
A. He represented that his business was never in better condition since they had been in business, and I had been more or less conversant with the concern for a great many years and supposed I knew something about their standing commercially, in a general way, all of which he confirmed; and he stated, among other things, that they had a capital of four hundred

usand dollars ($400,000), and that they had a surplus of one ndred and seventy thousand dollars ($170,000). That, in con- tion with his statement that the business was prosperous, d never been more so, was to that extent satisfactory enough make me make the loan. He also stated in the conversation at they wanted to use this money to pay their hands so that ir receipts from their business could be used in buying new k, to add to their output. They expected to increase it y materially.

Q. Do you recall any other special matters?

A. I do not know as I do.

Q. In discussing the business of the Fargo Company did the cussion relate to the Dixon factory only or did it cover the siness generally?

A. It covered the business generally, of course. The output the factory was all handled by the Chicago firm. That fact, of rse, I was familiar with; perhaps it was not stated in the erview at all.

Q. Did Mr. Fargo say anything to you in that interview about e other Dixon bank?

A. Yes, sir.

Q. Please state what he said on that subject?

A. He stated that the Dixon National Bank had agreed to n him ten thousand dollars ($10,000) divided in the same way, ernating the notes in the pay days, between that bank and rs.

Q. And did your bank finally agree to lend the Fargo Com- ny ten thousand dollars ($10,000)?

A. Yes, sir.

Q. With the understanding that the other bank was to lend m ten thousand dollars ($10,000)?

A. Yes, sir.

Q. When did this conversation take place?

A. When the application for the loan was made. It was some e in February, I think.

Q. What year?

A. 1896.

Q. Your bank made a voluntary loan of $10,000, did it?

A. Yes, sir.

Q. How much of that is paid?

A. Not anything. The first note that was made was renewed the same amount, so that the whole amount due is $10,000, l unpaid.

Testimony of Samuel C. Eells

Q. Was there any understanding between you and Mr. Fa[illegible] at the time the loan was made that it was to be a specific l[illegible] and that the paper was to be paid when it was matured?

A. I do not remember that that thing was talked over at a[illegible] there was no understanding that any part of it should be r[illegible] newed until the first note became due.

Q. At the time the original loan was made or agreed to [illegible] made, there was no understanding it was to be a continu[illegible] loan?

A. No, sir.

Q. The date of maturity was fixed?

A. Yes, sir.

Q. And notes were to be given maturing on these dates?

A. Yes, sir.

Q. And then, of course, the notes were to be paid?

A. Yes, sir; that was the understanding.

Q. Now, when the first note matured, what took place?

A. My recollection is that they wrote inquiring if a rene[illegible] of that note would be acceptable.

Q. Do you remember whether you had any personal int[illegible] view?

A. I had no personal interview.

Q. As a matter of fact that note was renewed?

A. That note was renewed; yes, sir.

Q. Was any part of the $10,000 paid to your bank?

A. No, sir.

Q. What was there owing to your bank on August 6, 189[illegible]?

A. $10,000.

Q. There is now due and owing to your bank the same amou[illegible]

A. Yes, sir.

Q. And interest?

A. And interest.

Q. What is the rate of interest called for by the note?

A. Seven per cent. after due.

Q. Can you give the maturity of the three notes?

A. I have an affidavit that I have made and had prepare[illegible] and it has been sent here, which gives the dates.

Q. Give us the maturity of the three notes so that the amou[illegible] of your claim and interest may be reckoned and determined?

A. The date of the first note unpaid was June 10, 189[illegible], f[illegible] $3,500 at ninety days after date; the second note which is u[illegible] paid was dated June 6, 1896, $3,500 due in ninety days, with i[illegible]

Complainant's Evidence—Testimony.

st after due at seven per cent., and the third note was dated r 14, 1896, for $3,000.

Q. And due?

A. Due in ninety days.

Q. Was there any change made in the form of these notes r the Fargo Company failed?

A. Yes, sir.

Q. What was that change?

A. The notes were surrendered—these original notes were rendered and a judgment note given for the total sum with ts.

Q. What was the amount of that judgment note?

A. $10,500.

Q. What is the date of that judgment note?

A. That was August 16, 1896.

Q. Has any part of that $10,000 or any part of that $10,500 been d?

A. No, sir.

Q. Is it now all due and owing to your bank?

A. It is.

Q. Have you any or did you ever have any security of any d for that indebtedness?

A. No, sir.

By Mr. Follansbee.

Q. Was not your bank, Mr. Eells, made a party to a suit for echanic's lien, against the manufacturing plant out there at on, and did you not in that suit prove up the amount of your im?

A. I think our bank was made a party to that suit, but we er proved up any claim.

Q. Was not the amount of your claim against the Fargo Com- y found and determined in a decree that was entered in se mechanic's liens suits?

A. I think not, sir.

Q. You do not know?

A. It was not—not to my knowledge.

Q. You do not know then that your claim was in any way sented in that suit?

A. No, sir.

Q. Or whether it was allowed in any way?

A. It was not allowed in any way to my knowledge.

Evidence taken before Master.

Testimony of Samuel Bells.

Q. If that was done, it did take place without your knowledge?

A. Yes, sir.

Cross-Examination by Mr. Beale.

Q. Is there any balance in your bank to the credit of the Fargo Company?

A. Yes, sir; I think there is a small amount.

Q. Approximately, how much?

A. About forty dollars; forty dollars and some cents; I cannot remember the odd cents.

Q. Mr. Fargo was very enthusiastic on the subject of his "ball bearing shoes," was he not?

A. Well, he was very enthusiastic, yes.

Q. Mr Fargo seemed to think there was a great deal of merit to me made particularly out of that ball bearing shoe, did he not?

A. That is one of the points he made.

Q. A special one?

A. Yes, sir.

It is agreed that the claims of the Dixon National Bank and the City National Bank of Dixon shall stand proved, as proved by the officers of said two institutions in their testimony taken this day, without further proof, but the right to attack said claims upon notice to said two banks is reserved.

Testimony of F. Vogel, Jr.

FRED VOGEL, JR., called as a witness on behalf of the intervening petitioner, Pfister & Vogel Leather Company, being first duly sworn, was examined in chief by Mr. Tenney and testified as follows:

Q. State your name, Mr. Vogel?

A. Fred Vogel, Junior.

Q. What is your business?

A. Tanner.

Q. You are one of the officers of the Pfister & Vogel Leather Company?

A. I am.

Q. How long have you been connected with that company?

A. Since 1874.

Q. In what capacity?

A. As general manager, and since 1892 I have been president of the company.

Q. Do you know Mr. Charles E. Fargo of C. H. Fargo & Co.?

A. I do.

Q. Your company had sold goods to the Fargo Company in January, 1896, hadn't it?

A. Yes, sir.

Q. Please state between what dates goods were sold and the total amount of their account for goods sold from January 7, 1896, until June 26th?

A. What was the total amount?

Q. Yes.

A. Twenty thousand five hundred and four dollars and thirty-two cents ($20,504.32).

Q. State what, if any, payments were made on that account?

A. It seems here—April 21st there is a credit of one thousand dollars ($1,000); April 29th, merchandise returned, one dollar and ninety cents ($1.90), and on June 18th, cash, one thousand nine hundred and forty-four dollars and fifty-two cents ($1,944.52), a total of two thousand nine hundred and forty-six dollars and forty-two cents ($2,946.42), leaving a balance of seventeen thousand five hundred and fifty-seven dollars and ninety cents ($17,557.90).

Q. Upon what terms were these goods sold, Mr. Vogel?

A. Four off sixty.

Q. That is on a credit of sixty days?

A. A credit of sixty days with a discount of four per cent. for cash payment.

Q. Did you subsequently receive a note on this indebtedness from the Fargo Company?

A. Yes, sir.

Q. For what amount?

A. If I recollect, for about two thousand dollars ($2,000).

Q. State the circumstances?

A. As I recollect it some time in June they mailed us notes, I think, to the amount of about nine thousand dollars ($9,000), and as we did not like to endorse the notes, did not have no use for them, we wrote them back that we would prefer to have them pay the account in cash, but that we would as an accommodation accept the first note, which I think was about three thousand dollars ($3,000).

Q. And the other notes were returned to them?

A. The other notes were returned to them.

Testimony of F. Vogel, Jr.

Q. Then was it this three thousand dollar note which was paid by the credits on the account you have spoken of?

A. I do not think that appears on here.

Q. Oh, it does not appear at all on the account?

A. I think not; I do not see it here.

Q. Did you subsequently see Mr. Charles E. Fargo with reference to the matter?

A. I called on Mr. Fargo. The account ran along, and they made no payments on the account; at that time, in July, 1896, times were a little uneasy, and I came down here to see Mr. Fargo; I have never met Mr. Fargo before, and I met Mr. Fargo in his office.

Q. That is Charles E. Fargo?

A. Charles E. Fargo—I met him in his office.

Q. State what took place?

A. I introduced myself—told him that I had come to see him to arrange for a settlement of that account; that we were in need of money, and that we ought to have a payment on that account of all the bills that were past due. He said that he had no money; that collections were slow; that he could not give me anything. I then suggested to him that he give me some collateral, if he could not pay; we ought to have some collateral. He said he would not give me no collateral; he could not give me any goods, nor would he assign accounts to me, nor would he give me merchandise in the shape of leather or anything of that kind. I told him I would not go home unless I had some collateral on this claim; unless I had some satisfaction that I would not go. I then put the question to him. I says: "Are you really solvent?" He says: "I have got $2 for every one that I owe." That he had a prosperous business; had never done better; that all it took was a little patience; that the times were very difficult for them, collections were slow, but that they would shortly pay us every dollar that they owed us, and I asked him this, I says: "Have you got any judgment notes out, or has anybody got any preferences here?" And he says: "No." I kept pressing him for a transfer of some goods or some security and he refused to do it, and after considerable talking and talking he finally says: "Now, I will tell you, I will talk this matter over with my brother; you come in again after lunch," and I says, "All right." I came back after lunch and he said he had talked with his brother and that they would not give me any collateral, could not, but that he had a house in which he had an equity, which he considered worth $15,000, and that he

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Testimony of F. Vogel, Jr.

ould give me a trust deed of that house. We went down to ook at it, and as that was all I could get I consented to take hat. I had pressed him for a statement; I had written him for statement of his affairs previous to that, and he then told me hat they were in the midst of an inventory and they would fur- ish us that statement very shortly. That statement never ame. Then, as the result of this he gave me a note—I haven't ot it, but I will produce it here—a demand note for fifteen housand dollars of his company—no; he gave me his own per- onal note for that amount, $15,000.

Q. As collateral to the indebtedness of the company?

A. Yes.

Q. And that note secured by this second mortgage on that ouse?

A. Yes; practically a second mortgage.

Q. Did he tell you what the prior mortgage was?

A. Yes; it was $30,000.

Q. Did you know at that time that C. H. Fargo & Co. had iven judgment notes to L. Candee & Company or to the United tates Rubber Company?

A. I did not.

Q. This conversation which you had with him in which he as stating to you his condition referred to the condition of the ffairs of his company—the C. H. Fargo Company—did it?

A. Yes, sir.

Q. And his statement was that it had given no judgment otes?

A. Yes.

Q. What date was this conversation?

A. On the 22d of July, 1896.

Q. The note that you have spoken of which was given be- ore to you. this security in July, was not paid?

A. Not paid, no.

Cross-Examination by Mr. Beale.

Q. This statement of account does not cover all of the busi- ess of your company with the Fargo Company, Mr. Vogel?

A. It does of that period.

Q. That is what I mean; you had previous dealings with hem?

A. Yes; we had done business with the Fargos off and on a reat many years.

Testimony of F. Vogel, Jr.

Q. This statement purports to show sales only after January 6, 1896, and payments of account of these particular sales?

A. Yes, sir.

Q. They owed you some amount, did they not, prior to this statement of January 6th?

A. Yes; we did business with them in 1895 and 1894.

Q. And they owed you something, did they not, on January 6, 1896?

A. That I could not say; I should judge the account was settled up; that would be my judgment, seeing this statement.

Q. But you have no independent recollection of it?

A. No; I have no independent recollection of it.

Q. I have had the books of the Fargo Company examined, Mr. Vogel, and from them I judged the Fargo Company owed your company about one thousand six hundred and fifty-five dollars ($1,655) January 6th; you could not say whether that was so or not so?

A. I could not say; I should judge, if the books showed it, it would be correct. They settled other bills up to that date and when the settlement have been received they paid accounts previous to that date.

Q. Their books also show, as I understand them, that then that the Fargo Company paid your company between January 6th and August 6th four thousand six hundred and seventeen dollars ($4,617), which would have paid off all the pre-existing indebtedness and left this credit of about two thousand nine hundred and forty-six dollars ($2,946); you do not remember about the credit, do you?

A. No; I do not.

Q. You have no independent recollection?

A. No.

Q. That may or may not be so?

A. Yes, I could not tell.

Q. What became of your second-mortgage interest in that individual real estate of Mr. Fargo?

A. We simply dropped it; did not follow it up any further.

Q. That was on the premises at 1840 Calumet avenue, was it not?

A. I think it was; yes.

Q. And there was a first mortgage held by Charles E. Towne?

A. Yes.

Q. Do you remember whether Mr. Towne subsequently foreclosed the mortgage?

Complainant's Evidence—Testimony.

A. I think he did; I am not certain of it. He wrote to us d wanted us to relinquish our claim, give him a release, ich we refused to do, but we have taken no further steps. Testimony of F. Vogel, Jr.

Q. You have never received anything for that mortgage, re you?

A. No, sir.

Q. There have been some negotiations looking to a possible ment to you for a possible release?

A. No; we never had no offer.

Q. Didn't you offer to release for $500 or something of that rt?

A. I recollect the thing was proposed to us, and I recollect e sum was fifteen hundred dollars ($1,500) that was mentioned: t for fifteen hundred dollars ($1,500) we should release our ht; there has been some discussion but nothing more.

Q. You have received nothing?

A. I have received nothing.

Re-direct Examination by Mr. Tenney.

Q. The property has been foreclosed, as you understand, der the first mortgage—has been sold?

A. I do not know that. He says—Mr. Towne says that was at he was going to do.

Q. Those prior transactions, Mr. Vogel, which your company d with the Fargo Company before 1896, were they larger or aller in amount than in 1896?

A. Smaller; I should think the business in 1895 did not ex- ed $10,000.

Q. For the entire year?

A. Yes; I do not think it exceeded that, which was a small siness.

Q. You mean the total sales?

A. The total sales for twelve months.

Q. Not the amount due from them at any one time?

A. No; the total sales for the period.

Q. And from that, the amount due you—the amount unpaid any one time due you—would be very much smaller than ,000?

A. Yes; because goods were sold at sixty, and if they had ken some extra time it would not have exceeded $5,000.

Q. At any one time?

A. I do not think it would.

Evidence taken before Master.

Testimony of F. Vogel, Jr.

Q. Did you know during or at any time till after the fa that there had been any change in their board of directors which the employes—clerks—in the office of Isham, Lincol Beale, attorneys for L. Candee & Company and the United St Rubber Company, had been placed in the board of directors C. H. Fargo & Co.?

A. No, sir.

Re cross Examination by Mr. Beale.

Q. Did you know anything about the directors at any t Mr. Vogel?

A. No, sir.

Q. Neither before January 6th nor afterwards?

A. No, sir.

Introduction of Complainant's Exhibit 7.

Mr. Tenney: I offer in evidence a certified copy of the j ment recovered by the Pfister & Vogel Leather Company aga C. H. Fargo & Co., in the Circuit Court of Cook County, on cember 18, 1896, for fifteen thousand three hundred and s dollars ($15,360), (this judgment being rendered upon part of indebtedness of C. H. Fargo & Co. to the Pfister & Vogel Lea Company), and also the executions issued on said judgm to the sheriff of Cook County and the sheriff of Lee County.

The Master: Said judgment and execution are received marked Complainant's Exhibit No. 7. (See page 211.)

Mr. Tenney: I wish to say something in explanation. Pfister & Vogel Leather Company in proving their claim w was filed with the receiver, stated that the company had n curity for any part of its claim and had not had any. T statement that it never had any security is not strictly c rate, for at one time they had security upon tha indivi property fo Mr. Charles E. Fargo. That property was foreclo under prior mortgage so that they never got anything out I drew the affidavit in the claim. I did not know until a days ago, when Mr. Vogel testified, that any such security ever been given, and the member of the corporation who m the affidavit, it seems, was also ignorant of the fact.

By stipulation of all parties this statement is to be taken a amendment to the statement of facts in the proof of claim of Pf & Vogel Leather Company.

Complainant's Evidence—Testimony.

Testimony of J. D. Neilson.

MES D. NEILSON, called as a witness on behalf of complainant, being first duly sworn, was examined in chief by Mr. Newman, and testified as follows:

Q. Mr. Neilson, what is your full name?
A. James D. Neilson.
Q. What is your business?
A. Manager of leather company.
Q. What is your concern?
A. American Oak Leather Company.
Q. The complainant in this cause?
A. Yes, sir.
Q. Where do you reside?
A. In Englewood.
Q. Chicago?
A. Chicago.
Q. How long have you lived in Chicago?
A. I have lived here for fourteen years.
Q. How long have you been manager of the complainant mpany?
A. Fourteen years.
Q. At Chicago?
A. Yes, sir.
Q. Did the American Oak Leather Company do any business th the Fargo Company known as C. H. Fargo & Co.?
A. Yes, sir.
Q. Will you please state the volume of business done by the erican Oak Leather Company with the Fargo Company dur- the year 1895?
A. Four thousand two hundred fifty-one dollars and one cent 4,251.01).
Q. Does that figure represent the total purchases made by e Fargo Company of the American Oak Leather Company dur- the year 1895?
A. Yes, sir.
Q. Now, the figures you have just given us, does that repre- nt one purchase, or the total purchases for the year?
A. No; that represents the total purchases.
Q. During the whole year?
A. Yes, sir.
Q. Now, coming to the year 1896; what was the volume of rchases made by the Fargo Company of and from the Amer- n Oak Leather Company during that year?

Testimony of J. D. Neilson

A. Thirteen thousand two hundred eighty-eight dollars and forty-one cents ($13,288.41).

Q. What did the Fargo Company owe the American Oak Leather Company when the Fargo Company failed in August 1896?

A. Twelve thousand eight hundred twenty-nine dollars and fifty-six cents ($12,829.56).

Q. How much did the Fargo Company buy of the American Oak Leather Company during January, 1896?

A. My remembrance is that they did not buy anything from us in January.

Q. Then the total indebtedness which the Fargo Company owed the American Oak Leather Company at the time the Fargo Company failed in 1896 represented purchases made after January, 1896?

A. Virtually. I don't think they bought anything in January. My impression is that the great majority, in fact almost all of this indebtedness was purchased after the 1st of March.

Q. 1896?

A. Yes, sir.

Q. Please look at the documents and papers you have relating to the transactions between the American Oak Leather Company and the Fargo Company, and state definitely what purchases were made in the year 1896. I now show you for the purpose of aiding you the claim that was originally filed by the American Oak Leather Company with the receiver in this case on March 27, 1897, as claim No. 74?

A. Well, the total amount of our sales to them from March 14, 1896, was $12,829.56, and the total sales to them for 1896 were thirteen thousand two hundred and eighty-eight dollars and forty-one cents ($13,288.41). Now, I don't believe they have paid us anything on this $13,288.41. There is probably some rebate or something on our books that would make up for that little difference between these two items here.

Q. But the difference between those two items is not represented by any money payment?

A. No, sir.

Q. Was any money paid the American Oak Leather Company for purchases made on and after March 1st, 1896?

A. No, sir.

Q. Did any part of that indebtedness so created after March 1, 1896, mature before August 1, 1896?

A. Yes, sir.

Testimony of J. D. Neilson.

Q. What became of it when it matured? What disposition was made of the indebtedness?

A. It was settled by notes.

Q. When did that happen?

A. They asked us to extend the time.

Q. Was that extension asked in addition to the original credit given at the time the sale was made?

A. Yes, sir.

Q. Have you got the notes with you?

A. The notes are here, or copies; yes, sir.

Q. When did that extension take place—what month?

A. That took place in the month of June.

Q. What year?

A. 1896.

Q. I show you the two notes, or rather copies of the two notes attached to the proof of claim filed by the American Oak Leather Company with the receiver in this cause on March 27, 1897, and ask you whether those notes are correct copies of the original notes?

A. Yes; they are correct as far as I can remember.

Q. What are the dates of the two notes?

A. June 6th.

Q. What year?

A. 1896.

Q. By whom were the notes signed?

A. C. H. Fargo & Co.

Q. Is the name of any officer attached to the corporate signature?

A. I don't think so; I don't see that there is.

Q. The notes are made payable to the American Oak Leather Company?

A. To the American Oak Leather Company; yes, sir.

Q. And the first note is due when?

A. The first note is due September 27, 1896.

Q. For what amount?

A. For thirty five hundred dollars ($3,500).

Q. When is the next note due?

A. October 27, 1896, for thirty-five hundred dollars ($3,500).

Q. Together making seven thousand dollars ($7,000).

A. Yes, sir.

Q. Did that $7,000 represent that portion of the indebtedness which had matured by its original terms of credit?

A. Yes, sir.

Testimony of J. D. Neilson.

Q. And that portion was extended?

A. Yes, sir.

Q. I assume that the remainder of the indebtedness had not matured?

A. No, sir; it had not matured.

Q. Who asked for an extension of this indebtedness in June, 1896?

A. C. H. Fargo.

Q. You don't mean C. H.—you mean C. E., don't you, the president of the company?

A. Yes, sir. I will tell you, Mr. Newman, it is my impression now that they simply sent us those notes in a letter, made the extension themselves, and asked us if it would be satisfactory?

Q. And you good-naturedly consented?

A. I believe we then got this report from Dun.

Q. And before you accepted the notes, the extension notes, did you get any report from any commercial agency?

A. It is my impression that we did.

Q. I now hand you a report issued by the commercial agency known as the R. G. Dun Company, and ask you whether that is the report you obtained from that commercial agency?

A. Yes, sir.

Q. After receiving that report did you then accept the two extension notes aggregating $7,000?

A. Yes, sir.

Q. Did you rely upon that statement in accepting the two extension notes?

A. Yes, sir.

Q. Now, Mr. Neilson, the notes bear date June 6th, while the report itself bears date June 9, 1896?

A. Well, that might have been the case because we probably held those notes until we got this report in. I am quite sure the notes were sent in, as I told you, without asking us about it at all, and we considered the matter in that light. I first sent and got our report from the agency on them; then I might have talked or inquired around for all I know.

Q. But you relied upon that report?

A. We always do.

Q. And on the strength of this agency report which you received you accepted the two notes and gave the extension?

A. Certainly. If it had been different, I would not have accepted the notes.

Mr. Newman: We offer in evidence the agency report of R. G.

Testimony of J. D. Neilson.

Dun & Co., the commerical agency, rendered to the American Oak Leather Company on June 9, 1896, reading as follows:

"Fargo, C. H. & Co. (Inc.), Whol. B. & S., Chicago, Ills.
"No. 200 Market Street.

"Chas. E. Fargo, Pres.
"Frank M. Fargo, Vice Pres. & Treas.
"Edward A. Fargo, Secy.

"April 1, 1896. * * * This is an old established house, which operated as a co-partnership down to December, 1889, when they incorporated with an authorized capital of $400,000, which they claimed was full paid at the time in the assets of the old firm. Capital being no greater than that previously used in the business. In March, 1892, Mr. C. H. Fargo, the founder of the house, died, leaving his entire estate, estimated at some $500,000, to his three sons, who have since been the sole owners of the business. The house has never been inclined to furnish close details regarding their affairs, but in April, 1893, stated that inventory of October, 1892, showed assets of $1,097,692.39, with total liabilities of $624,453.19. Surplus, $473,239.20.

"After the death of their father, it was said the sons spread out considerable, did too much business for their capital, and at one time owed a good deal of money, and some unfavorable rumors were circulated regarding them in the fall of 1893, but some were claimed to have been without foundation by parties who investigated their affairs closely at the time, and in January, 1894, it was said their liabilities had been reduced to a little over $220,000 by reducing stock and sailing closer to shore.

"Since then they appear to have run along smoothly, but, like others in the line, have made little, if any, money. Mr. C. E. Fargo now gives us the following figures showing condition as per inventory May 1, 1895, which was the last taken.

ASSETS.

Merchandise	$245,438 89
Printing and stationery	1,100 00
Insurance	1,400 00
Furniture and fixtures	6,500 85
Factory at Dixon	110,262 66
Real estate	2,223 09
Accounts receivable	366,359 08
Cash	5,869 38
	$743,153 95

Testimony of J. D. Veilson.

LIABILITIES.

Bills payable	167,589 31	
Accounts payable	158,925 43	
		$326,514 74
Net surplus		$416,639 2

"Says condition would probably not be materially changed at present, as no money has been made during the past year. Have got out something new in bicycle goods, however, that are proving popular, and in which are having a good trade at present.

"This statement is the same as made to their bankers and accepted as correct from their standpoint, and shows them to have thus far kept their capital intact. Outstanding accounts factory plant, however, would likely be subject to some depreciation. At bank they are reported keeping a good account all the time, paying everything prompt and at present only using about three-fourths of their discount line and considered good for legitimate business requirements, and all the parties at interest well thought of. B. X I. M. E. C."

Q. Did you have any talk during the year 1896 with any of the Fargos, or any of their managers, concerning the condition of the Fargo Company? If so, with whom and state what occurred?

A. I can't remember any special occasion on which I had a conversation of that nature. I had no conversation that I remember of with Mr. Fargo, but I did with Mr. Joslyn, his superintendent. Mr. Joslyn told me that they were making money on their bicycle shoes. In fact, that was the general impression in the early part of 1896, that they were making money; almost everybody thought so, and that impression came from them originally; must have come.

Q. What was the amount due or owing from C. H. Fargo & Co. to the American Oak Leather Company on August 6, 1896, exclusive of interest?

A. Exclusive of interest?

Q. Yes.

A. Twelve thousand eight hundred twenty-nine dollars and fifty-six cents ($12,829.56). This is the amount after allowing them a discount of four per cent., amounting to one hundred seventy dollars and forty-eight cents ($170.48).

Complainant's Evidence—Testimony.

THOMAS S. KEIRNAN, called as a witness on behalf of the Lambeau Leather Company, being first duly sworn, was examined in chief by Mr. Newman, and testified as follows: Testimony of T. S. Kiernan.

Q. What is your name?
A. Thomas S. Keirnan.
Q. What is your business?
A. Secretary.
Q. Of what?
A. The Lambeau Leather Company.
Q. How long have you occupied that position?
A. About seven years.
Q. Where do you live?
A. Chicago.
Q. How long have you lived here?
A. Eight years.
Q. Where is the place of business of the Lambeau Leather Company?
A. 105 Elston avenue, our office is.
Q. And the factory?
A. One factory there, another factory on Fleetwood street.
Q. All in Chicago?
A. Yes, sir.
Q. Did the Lambeau Leather Company have any business dealings with the Fargo Company in the year 1895?
A. They did.
Q. In what did they consist? What is the nature of the dealings?
A. Selling them leather.
Q. What quantity of leather did the Lambeau Leather Company sell the Fargo Company in the year 1895?
A. Sixteen thousand one hundred and eighty-three dollars and twenty-six cents ($16,183.26).
Q. What quantity of leather did the Lambeau Leather Company sell the Fargo Company in the year 1896?
A. Twenty-one thousand four hundred and eleven dollars and twenty-four cents ($21,411.24).
Q. How much, if any part, of the total sales made during the year 1896 were made in January, 1896?
A. One hundred and twenty-five dollars and thirty-nine cents ($125.39).

Testimony of T. S. Kiernan.

Q. And the remainder of the total sales of the year 1896 w made when?

A. Extended over a period of from February, 1896, to the ti of their failure.

Q. And the total amount, including the $125.39 sold January, amounted to how much in 1896?

A. $21,411.24.

Q. How much did the Fargo Company owe your compa when the Fargo Company failed in August, 1896?

A. Six thousand nine hundred and fifty dollars and seven six cents ($6,950.76).

Q. Was any part of that overdue?

A. They made their settlements by notes, and no notes w at that time due that represents this amount.

Q. Did they make notes or give you notes at the time t goods were purchased or thereafter?

A. As I recall it, our agreement was that we were to rece notes within ten days of the date of purchase, and they pr tically complied with that agreement.

Q. With that understanding?

A. With that understanding. The terms would vary a lit practically the same.

Q. On what terms of credit did your company sell to t Fargo Company?

A. Ninety-day note, less the usual cash discount of 5 p cent.

Q. You did not give them the longer time, four, five and s months?

A. No.

Q. Did you have any conversation with the Fargos, or an body in authority connected with the Fargo Company, w respect to its financial condition at any time during the ye 1896?

A. At various times I had general conversations with Mr. E. Fargo; then at times with Mr. Frank Fargo, and then aga with Mr. Joslyn, their superintendent.

Q. State what these gentlemen said to you?

A. They always showed me that they were making money their bicycle shoes, and they left the impression with me tha they were getting along very nicely. I never had any specif statements from them of their condition other than what I re ceived from the agency.

Q. Have you got that with you?

Complainant's Evidence—Testimony.

I have not. Testimony of T. S. Kiernan.

What agency?

Well, we are subscribers to several agencies. I couldn't off-hand which.

You are subscribers to Bradstreet's and Dun's?

In that year we were subscribers to Bradstreet's and the reau of Credits.

Has any part of the indebtedness which was due the mbeau Leather Company from the Fargo Company at the time Fargo Company failed been paid?

No, sir.

What is there now due and owing from the Fargo Company the Lambeau Leather Company, exclusive of interest?

$6,950.76.

By all parties it is agreed that the Lambeau Leather Com- on the 10th day of September, 1896 recovered judgment in Superior Court of Cook County, Illinois, against C. H. Fargo Co. upon the indebtedness then owing by C. H. Fargo & Co. the Lambeau Leather Company in the sum of $6,950.76, $11 court costs, making a total of six thousand nine dred and sixty-one dollars and seventy-six cents ($6,961.76) legal interest thereon at 5 per cent. per annum from the day of September, 1896, and that an execution issued said judgment to the sheriff of Cook County, Illinois, which ution was duly returned, "No property found, no part satis-"

Cross-Examination by Mr. Beals.

Did the Fargo Company owe your company anything on uary 6, 1896?

I couldn't answer that without referring to the books.

What is your best judgment whether they did owe you ething or not?

Would you permit me to telephone?

If you don't remember, I don't care to press it. I can e it some other time.

I will say this: We made our last sale to Fargo in the th of October for the year 1895, and as we sold them on ty days and they met their notes promptly, the assump- is that they must have owed us a little in January.

Evidence taken before Master.

Testimony of T. S. Kernan.

Q. Did you know in 1895 who the directors of the Fargo C pany were?

A. I did not.

Q. Did you know in 1896 who they were?

A. I did not.

Q. Did your company ever pay any attention to who the rectors were of the Fargo Company?

A. We simply accepted the reports of the agency.

Q. On their general financial condition?

A. Yes, sir.

Q. But paid no special attention to who their directors w

A. No.

Re-direct Examination by Mr. Newman.

Q. Did you at any time suppose that anybody except Fargo boys were owning or running the Fargo Company?

A. Never.

Q. Did you at any time know that the United States Ba Company, or L. Candee & Company, or anybody on their be controlled the board of directors of the Fargo Company?

A. I did not.

Q. Did your company?

A. They did not.

Q. Did anybody connected with your company?

A. No, sir: as I had sole charge of the matter of credits the disposition of the goods.

Q. You were the man connected with the Lambeau Le Company who gave credit?

A. In every particular?

Q. So that the matter was peculiarly within your knowl

A. Yes, sir.

All the parties in interest in this cause, except the Metrop National Bank, stipulate and agree to waive, and hereby do w the question as to whether the execution issued upon the jud recovered by the American Oak Leather Company against Fargo & Co., in the Superior Court of Cook County, Illino the tenth day of September, A. D. 1896, for the sum of thousand eight hundred twenty-nine dollars and fifty-six ($12,829.56), was duly returned, "No property found," as re by law, before the bill in this cause was filed; and hereby any question or defense which might be made or raised on acco the return appearing on the execution itself.

AMES D. NI
Newman, te

Q. Mr. Nei
A. Yes, sir
Q. Since y
fice files for
e Fargo Co
ny extendi
A. Yes, si
Q. Have y
A. Yes.
Q. Please
A. (Paper

follows:

Chas. E. Far,

erican Oal
Gentlemen :
per enclose
dation to u

Q. Is tl
ssion?
A. Yes
Q. I ha
tement

Evidence taken before Master.

Testimony of T. S. Kernan.

Q. Did you know in 1895 who the directors of the Fargo Co[mpany] were?

A. I did not.

Q. Did you know in 1896 who they were?

A. I did not.

Q. Did your company ever pay any attention to who the d[irectors] were of the Fargo Company?

A. We simply accepted the reports of the agency.

Q. On their general financial condition?

A. Yes, sir.

Q. But paid no special attention to who their directors we[re]

A. No.

Re-direct Examination by Mr. Newman.

(The following should be read as a part of the stipulation at t[he] foot of page 160:)

And the said parties further stipulate that the creditors of C. [E.] Fargo & Co. supposed that the three Fargos, C. E., F. M. and [A.] A. Fargo, owned all the stock of the corporation, were its d[irectors] and members of the board of directors; that the creditors did [not] know or pay any attention to the question who the other direct[ors] were, either in 1895 or in 1896, other than that they assumed [or] believed that the three Fargos controlled and ran the Company.

the disposition of the goods.

Q. You were the man connected with the Lamb[eau] Leath[er] Company who gave credit?

A. In every particular?

Q. So that the matter was peculiarly within your knowl[edge]

A. Yes, sir.

All the parties in interest in this cause, except the Metropol[itan] National Bank, stipulate and agree to waive, and hereby do wa[ive] the question as to whether the execution issued upon the judgm[ent] recovered by the American Oak Leather Company against C. [E.] Fargo & Co., in the Superior Court of Cook County, Illinois, [on] the tenth day of September, A. D. 1896, for the sum of tw[elve] thousand eight hundred twenty-nine dollars and fifty-six c[ents] ($12,829.56), was duly returned, "No property found," as requi[red] by law, before the bill in this cause was filed; and hereby wa[ive] any question or defense which might be made or raised on account the return appearing on the execution itself.

JAMES D. NEILSON, recalled for further examination by Mr. Newman, testified as follows: Testimony of J. D. Neilson.

Q. Mr. Neilson, you were sworn the other day?
A. Yes, sir.
Q. Since your last examination, have you examined your office files for letters and documents relating to the notes which the Fargo Company sent to the American Oak Leather Company extending the indebtedness some time in June, 1896?
A. Yes, sir.
Q. Have you found them?
A. Yes.
Q. Please produce them.
A. (Papers produced.)
Q. In your answer at your former examination you stated that it was your recollection that the Fargo Company of its own volition sent you two extension notes in a letter, and that you received the notes in that way? Have you found that letter?
A. Yes, sir.
Q. I hand you a document and ask you whether that is the letter sent by the Fargo Company to the American Oak Leather Company, containing the two $3,500 extension notes?
A. Yes, sir.

Mr. Newman: We offer this letter in evidence, dated Chicago, June 6, 1896, on the letter head of C. H. Fargo & Co., and reading as follows:

Chas. E. Fargo, Prest. Frank M. Fargo, V. P. & Treas. Edwd. A. Fargo, Secty.

C. H. FARGO & CO.,
Manufacturers of Boots and Shoes,
196, 198, 200 Market Street.

Chicago, June 6, 1896.

American Oak Leather Company, 207 & 209 Lake Street, Chicago:

Gentlemen: We would be pleased to have you accept settlement of our account per enclosed statement if it meets with your approval; it will be an accommodation to us we should thoroughly appreciate.

Yours truly.

C. H. FARGO & CO.
CHARLES E. FARGO."

Q. Is the statement referred to in that letter in your possession?
A. Yes, sir.
Q. I hand you a document and ask you whether that is the statement?

Testimony of C. D. Neilson.

A. Yes, sir.

Mr. Newman: We offer this statement in evidence. The statement reads as follows:

" C. H. Fargo & Co.,
Boots & Shoes. Chicago, June 6, 189

American Oak Lea. Co., 207 Lake St.:

Dear Sir: We enclose herewith our check No. on the Metropolitan National Bank of Chicago, Ill., for $ to settle account as below. Please acknowledge receipt of same in full, and oblige,

Yours truly,

C. H. Fargo & Co.
Per.....

Folio.....

Mar.	13.	Apr. 15	$ 288 00
"	14.	"	2,343 60
"	19.	"	6 00
"	21.	"	177 00
Apr.	6.	May 15	2,666 67
"	4.	"	60 00
"	25.	"	36 00
"	25.	"	655 20
"	24		37 80
"	30		72 00
May	7		72 00
"	7		279 80
"	15		315 00
"	18		48 00
"	22		132 00
"	29		135 00
			$7,343 87

Dr.

Apr.	2.	Ret	19 11
			$7,324 76
		4 %	292 98
			$7,031 78
		Interest	122 50
			$7,154.28

Complainant's Evidence—Testimony.

Testimony of J. D. Nellson.

Dr.		
Note due Sept. 27, enclosed	$3,500 00	
Note due Oct. 27, enclosed	3,500 00	
Check	154 26	
		$7,154 26

Q. At the bottom of the statement I find the following: Dr. note due Sept. 27, enclosed, $3,500; note due Oct. 27, enclosed, $3,500; check, $154.26; total, $7,154.26. Were the notes referred to or specified in that statement the notes which you received enclosed in a letter dated June 6, 1896?

A. Yes, sir.

Q. Were these the notes referred to in your former testimony?

A. Yes, sir.

Q. Does this statement dated Chicago, June 6, 1896, cover the entire indebtedness of the Fargo Company to the American Oak Leather Company on that date as due and matured at that time?

A. Yes, sir; all that had matured. I would state that that statement covered all the indebtedness to us up to May 28, 1896.

Q. Did they owe you anything at that time, on June 6, 1896, that had not matured?

A. I could not say.

Q. Well, the total amount of your claim on August 6, 1896, was something over $12,000?

A. Yes, sir.

Q. The Fargo Company must have owed your company the difference between the amount of these two notes for $3,500 each and the check for $154.26, and twelve thousand and some odd dollars, either at that time, or it was represented by merchandise purchased thereafter?

A. I do not know that we sold them anything between May 28th and June 6th, but the balance of this amount was sold after this settlement was made.

Q. When you received the letter dated June 6, 1896, the statement dated June 6, 1896, and the two $3,500 notes, and the check for $154.26, did you at once accept the extension notes, or what did you do?

A. I did not accept them at once; but got a report from the agency and wrote them a letter on the 10th accepting them—on June 10th.

Q. Did you get the report to which you refer in your former testimony and which was introduced in evidence, from the mercantile agency of R. G. Dun & Co.?

Testimony of J. D. Neilson.

A. Yes, sir.
Q. That is the report you got?
A. Yes, sir.
Q. When you got that report what did you do?
A. I wrote them a letter.
Q. Have you got a letter-press copy of that letter?
A. Yes, sir.
Q. I hand you the letter book of the American Oak Leather Company containing letters from June 9, 1896, to November 10, 1896, and ask you to state whether the letter you wrote to the Fargo Company is contained in that book, and if so, state on what page?
A. Yes, sir; it is; on page 18.
Q. Did you personally write that letter?
A. Yes, sir.
Mr. Newman: We offer that letter in evidence; please read it.
The Witness: (Reading from the letter-book) "June 10, 1896.
C. H. Fargo & Co.: Gentlemen—We received your letter of the 6th, covering notes in settlement of our account against you up to May 28th, which we will accept, but would like the subsequent purchases to be paid on usual terms we are making you, that is, 4 per cent. off, or sixty days from date of invoice. One reason we ask this is that during the summer months, when hides are good, we make large purchases for which we have to pay cash, and we have to depend on our collections for same or else borrow the money of the bank. Trusting this will be satisfactory. Yours very truly, American Oak Leather Company.
Dictated by J. D. N."
Q. Who is J. D. N.?
A. That is myself, J. D. Neilson.

Testimony of W. T. Kerr.

WILLIAM T. KERR, called as a witness on behalf of complainant, being first duly sworn, was examined in chief by Mr. Newman, and testified as follows:

Q. What is your full name?
A. William T. Kerr.
Q. Where do you live, Mr. Kerr?
A. 8732 Wood street.
Q. Chicago?
A. Chicago; yes, sir.
Q. How long have you lived in Chicago?

Testimony of W. T. Kerr.

A. This time eleven years.
Q. What is your business?
A. Reporter for the R. G. Dun & Co. Mercantile Agency.
Q. How long have you occupied that position?
A. I have been with the house twenty-two years, sir.
Q. What were your duties under that employment in the year 1896?
A. Reporting a portion of the down town territory here. My duties were, as they now are, to gather information from the surrounding trade, from the business houses, getting statements and getting them verified, writing up the reports and turning them into the office.
Q. For what purpose—for what use?
A. For the benefit of jobbers, bankers and manufacturers throughout the country who are subscribers to the agency.
Q. Did you at any time during the year 1896 call upon the Fargo Company, or any of its officers, for the purpose of ascertaining the financial condition of that concern?
A. Yes, sir. About the 1st of April.
Q. Whom did you see?
A. Mr. C. E. Fargo, the president of the company.
Q. Please detail the conversation you had with him on that subject.
A. Well, I cannot go into complete details as to statements of that kind made there without having the statement before me to refresh my memory. I am writing up numerous companies every day and I cannot recollect all these things and keep them in mind.
Q. I hand you a document and ask you what it is and by whom it is issued?
A. It is a report issued by R. G. Dun & Co., and written by myself on the 1st of April, 1896, after an interview with Mr. C. E. Fargo.
Q. Are the statements in that report true?
A. They are the statements made to me by Mr. Fargo, taken from his balance sheet—supposed to be taken from his balance sheet, that he produced these figures from. The four lines below the figures were Mr. Fargo's statement.
Q. Please read the statement.
A. "Condition would probably not be materially changed at present, as no money has been made during the past year. We've got out something new in bicycle goods, however, that are

Testimony of W. T. Kerr.

proving popular, and in which are having a good trade at pre-
ent." That is the end of Mr. Fargo's statement.

Q. Now, what are the figures to which he referred?

A. The figures in the statement taken from the inventory
May 1, 1895, which was the last inventory taken, according
his statement. This statement was made in April, and the
ventory in May, consequently he could not have the invento
of 1896, as it was a month prior to the regular inventory time.

Q. What do these figures show as to the financial condi
of C. H. Fargo & Co.?

A. Show them to have resources of $743,153.95, and liabilit
of $326,514.74, and a net surplus of $416,639.21.

That would be a surplus of $16,639.21 over their suppos
paid up capital stock of $400,000.

Q. You said that Mr. Fargo told you at that interview th
the conditions of the Fargo Company would probably not mat
ially be changed at present?

A. Yes, sir.

Q. What was the subject under discussion at that time a
what did that remark refer to?

A. As to getting a statement from that inventory. I ask
him how that would compare with the condition at the time
that interview, and he said that the situation had not mat
ially changed and would be about the same—they would be r
ning with about the same stock, and accounts, and about t
same business.

Q. Do you mean that the statement of assets and liabili
as you have given them and as they appear in this statem
was the subject referred to?

A. Yes, sir.

The Master: By request of counsel I now identify said sta
ment of R. G. Dun & Co. as the same statement introduced
evidence in connection with Mr. Neilson's testimony. (See p
155.)

Q. When you got that statement from Mr. Fargo, and the fa
and figures contained therein, and concerning which you ha
testified, what did you do with the information you so procur

A. I looked among some of his references to see what ver
cation I could get of the statement; called at his banker's, a
the banker stated to me this was a copy of the same statem
made to them.

Q. Do you recall who the bankers were?

Complainant's Evidence—Testimony.

A. My recollection is it was the Metropolitan National. Testimony of W. T. Kerr.
Q. What did you do with the information with respect to your ency?
A. After getting through working the case up, I went to the ice and wrote it up—wrote the information up and turned it in the regular course of work the following morning.
Q. That is, you had it in shape as it now appears in this atement?
A. Yes, sir; this is in the same shape as it was.
Q. And turned it into your office?
A. Yes, sir.
Q. And was put upon the books of the mercantile agency of G. Dun & Co.?
A. Yes, sir.
Q. For transmission to its customers?
A. Yes, sir.

Cross-Examination by Mr. Beale.

Q. Who, if anybody, else was present at the time of your inter- w with C. E. Fargo?
A. There was nobody in the room; it was Mr. Fargo's private ice. Mr. Hayes, his confidential man, was across the hall at s desk; the door was open between the two offices.

HOMAS CRATTY, called as a witness on behalf of the com- plainant, being first duly sworn, was examined in chief by Mr. Newman, and testified as follows: Testimony of Thomas Cratty.

Q. What is your full name?
A. Thomas Cratty.
Q. Your occupation?
A. Lawyer.
Q. How long have you been at the bar?
A. About thirty years.
Q. Were you counsel for the Fargo Company during the year e?
A. I was.
Q. Had you been counsel for that company prior to that e?
A. Yes, sir.

Testimony of Thomas Cratty.

Q. About how long?

A. Well, ever since their incorporation, which I think was 1890, and for the firm prior to that time; I do not recollect how long.

Q. You live in Chicago, Mr. Cratty?

A. Yes, sir.

Q. And have lived here how many years?

A. Since 1880.

Q. Mr. Cratty, did you represent the Fargo Company in the negotiations had between that concern and the United States Rubber Company and L. Candee & Company in January, 1896?

A. Yes, sir.

Q. Whom did you represent, and on behalf of whom did you act?

A. I just answered—C. H. Fargo & Co.

Q. Do you recall the details of those negotiations?

A. Some of them; not all of them, I think.

Q. During those negotiations, did the subject of consigning goods or merchandise by the two rubber companies to the Fargo Company come up for discussion and action?

A. Yes, sir.

Q. Please state what was said by the representatives of the two rubber companies on that subject, at that time—in January—on or about January 6, 1896?

A. I could not pretend to give details of conversations at the time. The subject was discussed; I can give the substance. The substance was that all goods which came from these companies, or were then on hand unsold, and all goods received thereafter, should be treated as consigned goods, and put on a separate floor by themselves, and a custodian put in charge of them.

Q. What was in fact done?

A. That was done, as I understand it.

Q. Who was the custodian placed in charge of the consigned goods after January 6, 1896, on behalf of the two rubber companies?

A. A young man—a young married man by the name of Hotchkiss—Adolph Hotchkiss we called him; he was a man around our office who had been unfortunate in business, and I believe I suggested his name, and he was accepted by the parties. I saw him at the store once or twice after that on the floor. I called in to see how he was getting along. I was getting

Testimony of Thomas Cratty.

terested to have him do well, and not have a break, because he was very poor.

Q. Do you now recall anything else that occurred with respect to the consigned goods?

A. I do not think I do.

Q. Did you discuss with the two rubber companies or their representatives the question as to whether merchandise shipped the way in which the two rubber companies had been shipping merchandise, or thereafter intended to ship merchandise the Fargo Company, was in fact a consignment or a sale?

A. I do not think the manner of shipping them was discussed that view. The manner of handling them and making settlements, I think, was discussed.

Q. Please state what took place—what the discussion was?

A. The goods had been sold and settled for in such a way at the conclusion seemed to be that what was there could not held as consigned goods, but that they might by agreement that time be taken out of the general stock and treated as nsigned goods from that on, together with other goods that ght be received.

Q. Now, for the purpose of removing the question from doubt d uncertainty, and to place the rubber companies in a position that they might claim their goods thereafter, in case disaster ertook the Fargo Company, what was in fact done, if anything as done?

A. All the goods then on hand, about which there could be question, were sorted out and placed on a certain floor where l new goods were to be also placed.

Q. All new goods received from the rubber companies?

A. Yes. Those goods, the goods still on hand, or then in the nds of the Fargo Company, they were to do with as they ght agree with the rubber companies; and it was agreed that ese goods should be thereafter treated as the property exclusely of the rubber companies, to be sold on commission.

Q. And was the custodian appointed for that same purpose?

A. Yes, sir.

Q. Can you recall as to the quantity of merchandise on nd January 6, 1896, and which was placed on the sixth floor, hich I may say to you was the floor selected?

A. No; I could not; I do no think I ever knew; if I ever did, I ve no recollection of it now, nor do I recall it as the sixth or, of my own knowledge.

Testimony of Thomas Cratty.

Q. Mr. Fargo has testified that the floor so selected was sixth floor of the building?

A. I know it was way up, because I went up to see Mr. H kiss a couple of times when I would be down there on some else.

Q. Who paid the custodian's fees?

A. I presume the Fargo Company did; that was the u standing—the agreement.

Q. Was anything said during those interviews about th surance on the property to be placed on the sixth floor?

A. No; I cannot recall whose name it was insured in.

Q. Was anything said as to whether the rubber compa should pay for the use of that sixth floor—rent or other pensation?

A. I do not recall. I suppose that would be determine the agreement. I think they had a written commission con —signed a contract between themselves, but which had not theretofore very closely lived up to. Goods were not remitte but were settled by notes—time notes, just as if they been purchased.

Q. How had the Fargo Company and the two rubber co nies dealt prior to January 6, 1896, with regard to shipments by the two rubber companies to the Fargo Company?

A. I only know by what transpired in those conve tions, and I presume I talked with Mr. Fargo about it, a know one question that was up was whether they were li criminally for having handled commission goods without counting for the goods, or paying for them, and I remember well what I advised them about that.

Q. What was it? What did you advise them?

A. That they were not liable.

Q. Why?

A. Because that course of dealing had been carried o long—the course of dealing then in vogue had been carried o long, that the commission—that the goods would not be tre as commission goods for the purpose of criminal prosecution. other words, they had treated the goods, I think, precisely they had been purchased—received on order for goods, and had sold them and settled for them by note from time to ti just as they did goods that were purchased outright. I to say here, however, that there was no threat of any pros tion, no hint of anything of the kind from the rubber compa or their counsel. Mr. Fargo wanted to know where they sto

Complainant's Evidence—Testimony.

Testimony of Thomas Cratty.

Q. With whom were those conversations—interviews?
A. Mr. Johnson, representing the rubber companies, and their counsel, Mr. Beale, and Mr. C. E. Fargo, principally. I think perhaps one of the other boys, Frank Fargo, might have been present part of the time, and I am not sure but Mr. Hayes was present part of the time, but those were the three principal parties or persons besides myself.
Q. From whom did the suggestion come of selecting an independent floor and having a custodian appointed?
A. I think that came from Mr. Beale; that is my best recollection.

Cross-Examination by Mr. Beale.

Q. Mr. Cratty, the conversations about which you have been examined took place something over two years ago, did they not?
A. Yes, sir; two years ago on January.
Q. This is now the latter part of March, and the subjects about which you have been examined formed but a small part of the whole conversations in January, at that time, did they not?
A. Yes; I think but a small part.
Q. Some two or three years before that, had there not been occasion, at the time when judgment notes were given by the Fargo Company to the Metropolitan National Bank and to the rubber companies, or to one of them, on which the subjects of consigned goods and resumption of possession of consigned goods by the rubber companies had come up for discussion, in which you were present a part of the time?
A. There were some meetings—some discussion—I do not remember whether one, two or three years prior to that time, when the Fargo Company gave judgment notes to the bank. I do not believe at that time that I had much to do with any—not very much to do, if anything—with any other branch of the case than their adjustment with the bank.
Q. You were advising the Fargo Company at that time, were you not?
A. Yes.
Q. And you were consulted by them?
A. That is right.
Q. Did you know of the dealings, or some of the dealings, at that time, in 1893, we will say, between the Fargo Company and the rubber companies?

Testimony of Thomas Cratty.

A. Yes.

Q. You knew the general basis on which they were dealing?

A. Yes; I could almost state, I think, what the indebtedness was to the rubber companies at that time and the bank.

Q. It was a large amount to the rubber companies?

A. Yes; nearly $200,000—

Q. And a large quantity of consigned goods held by the Fargo Company which had been consigned by the rubber companies or one of them, was there not?

A. I understand now that it was so, but I do not believe that I understood at that time that there was much question about their consigning the goods.

Q. But my question is whether it was not a fact at that time that there was also a large quantity of goods in the store of the Fargo Company which had been consigned by the rubber companies?

A. I now think it is a fact; I do not know that that fact came up then. I have since learned that all goods that the rubber companies shipped to them for years were under a consignment contract.

Q. And not sales at all?

A. Well, I think myself they were sales; I think the way they were settled for proved that they were sales.

Q. But they did not purport to be sales?

A. They had a consignment contract, and they were shipped as consigned goods, but they were settled for, I think, not according to the consignment contract; they were settled for as if they had been purchased.

Q. I am not getting at your legal opinion, Mr. Cratty, but what the papers purported on their face to be.

A. I do not think I ever saw any of the papers.

Q. It was in appearance a consignment arrangement, was it?

A. I understood it was, on the papers.

Q. I asked that question because you had spoken of the sales in your direct examination; I thought that was a mistake of language.

A. Oh, don't understand me to say that I ever understood that they purchased goods right out. Further, I think the conclusion we arrived at was that the goods were in a dangerous condition in January, if other creditors should attach and the rubber companies should undertake to claim them, but after that time I really believed they were perfectly safe.

Complainant's Evidence—Testimony.

Testimony of Thomas Cratty.

Q. Now, Mr. Cratty, get right back to the one question, because you are running off in a different line from the one I had in mind. There were in 1893 a large quantity of the rubber companies' goods in possession of the Fargo Company, either purchased or consigned?

A. Yes; I understand so.

Q. And the rubber companies resumed possession of them?

A. In 1893?

Q. Yes. And certain goods claimed to be consigned?

A. You mean they resumed a different possession from what they had before?

Q. Put a custodian in there and took possession actually, and the Fargos surrendered possession, I mean, in 1893—gave up such possession as they had technically?

A. Was that the time you think they put Hotchkiss in?

Q. Won't you answer my question; let me do the questioning; ask whether that was not the fact, that they did resume possession? I am referring to 1893.

A. I have no recollection of the company resuming any possession of consigned goods except at the time when Mr. Hotchkiss was put in custody of them under an agreement that they should all be put on one special floor.

Mr. Newman: What year was that?

Mr. Beale: He has testified that was in 1896.

The Witness: I mean in view of what you said a while ago, that I know of my own personal knowledge that Mr. Hotchkiss, prior to that time, had no connection whatever with the Fargos. We were using him occasionally whenever we could, as custodian for goods that might be attached or levied upon; would get him jobs of that kind, and he was at our office perhaps oftener than he was at any other place. He came from Peoria years ago. I knew him a good many years and his people before him.

Q. You do not remember, then, whether in 1893 there was a resumption of possession by the rubber companies of certain consigned goods, or was not?

A. I do not; I do not.

Q. You knew of the arrangements and discussions and negotiations which then took place about the giving of the judgment notes by the Fargo Company to the bank and the rubber companies, did you not?

A. Well, I had but very little to do with the giving—about the settlement of the rubber companies at that former period; very little to do; I know I struggled hard to prevent their giving the

Testimony of Thomas Cratty.

judgment notes to the bank; I know very well what occurred in Hamline's office, of Hamline, Scott & Lord.

Q. You were present, or rather you had a part in the conversation, did you not, with Mr. Fargo, on that subject, and some with me, and some conversation with both of us, and possibly some when Mr. Johnson was present in 1893?

A. I may have had; I am satisfied I did have with you.

Q. You and I talked over the matter at the Union League Club one night?

A. Was that in 1893 or 1896?

Q. I am asking you; I am trying to test your recollection; you are testifying, of course, just as you remember, but I am testing the accuracy of your recollection.

A. I am not sure; I know I went to dinner with you one evening at the Union League Club, and I know you made me eat altogether too much. I believe that was in 1896. That cannot have been five years ago—over five years ago.

Q. We came into more or less contact, in any event, did we not, in 1893, with that transaction about the giving of the judgment notes?

A. Yes.

Q. And we were together in John H. Hamline's office?

A. But there was not the slightest controversy with you or your people at that time.

Q. But, I understand, but that was the fact—we were there together?

A. Yes.

Q. And we have discussed that general situation?

A. Were you in Mr. Hamline's office at the time they gave the notes?

Q. I am asking you.

A. I do not believe you were there, Mr. Beale.

Q. We came into contact at that time, didn't we?

A. On conference, rather than contact.

Q. Yes, conference; I drew a series of judgment notes, made the original draft of them, and they were afterwards gone over by Mr. Hamline for the bank; is not that the fact?

A. Judgment notes for your companies, do you mean?

Q. Yes. I made a general draft or form for both that was used—we had a special form, because they were to be so provided that failure to pay one note should bring the whole series to maturity, and I drafted a general form, did I not?

A. I do not recall that; I can hardly understand it, because

Testimony of Thomas Cratty.

ere was no controversy with your people, but there was with e bank. We were willing to give you, as I recall it, the benefit any arrangement—do anything that was wanted, but not to e bank.

Q. It was agreed, was it not, that if judgment notes were ven to the bank, that all we wanted was to be treated the same s the bank?

A. It was the bank we had the quarrel with.

Q. There was no quarrel with our people?

A. Not as I understand.

Q. But Mr. Johnson was out here, and was I brought into the atter?

A. That may be.

Q. You have no distinct recollection of his being here?

A. I think Mr. Johnson was here at that time, but I think he ame on that account.

Q. Do you remember whether the judgment notes were shown you and your advice taken upon them before they were ecuted?

A. No; I do not believe they were shown to me on either casion.

Q. Your recollection is not entirely clear then as to what k place in 1893?

A. As to some things that took place it is entirely clear.

Q. It is clear, is it, that you advised the Fargo Company to me extent?

A. Yes; I advised them not to give judgment notes to the ank.

Q. They were consulting with you to some extent at that me?

A. Yes.

Q. But your recollection is not clear as to any conversations specting consignments of goods by the rubber companies be- taken possession of?

A. On that point I have no recollection whether the question taking possession of consigned goods came up or not. I do call very clearly that the Fargos thought that if your people me out here they could fix everything up satisfactorily with em, but the bank was ugly.

Q. Now, what I want to get at is whether it is not possible at you are confusing in your mind conversations and occur- nces that took place in 1893 with those which you think took ace in 1896, on the subject of consignments of goods?

Testimony of Thomas Cratty.

A. I think not; I can give you my reasons.

Q. I would be very glad to have them.

A. One reason is that in 1893—in 1896, at the time when t floor was selected and Mr. Hotchkiss was put in as custodi and that, I understand you to state—

Mr. Beale: No; I don't state it.

A. (Continuing)—I understood you to say that was 1896.

Mr. Beale: No, sir. Your recollection and mine are s what different, and I have given so little thought to the subj recently that I shall have to refresh my recollection, as I sh ask you to do by reading the testimony of Mr. Charles E. Fa in this case.

The Witness: I shall be very glad to do it and see if I a wrong, but if 1893 was the time Hotchkiss was put in possess then I am wrong.

Q. And you are not sure which it was, at this moment? sure that you would insist upon the correctness of your m memory as against that of others?

A. I think Mr. Fargo would be more reliable in every respe than I would, but I was sure until I heard you say you did remember whether it was 1896 or 1893; I supposed you wo remember it the same as I did.

Q. You say the subject of criminal prosecution was d cussed. Did anybody raise that on behalf of the rubber com panies?

A. I think not. I stated that no hint of that kind was mad

Q. You stated that no threat was made. It was not even suggested by the rubber companies or by anybody on their b half?

A. I think I used the word hint.

Q. The subject was not even mentioned in any of our con versations, was it?

A. I do not know that it was.

Q. Now, Mr. Cratty, was not the general fact about the dealings, as you understood it, this: That for many years th rubber companies, and particularly the United States Rubb Company, had been sending rubber boots and shoes to the Farg Company under an arrangement which purported to be at least a consignment of such goods to the Fargo Company, to sell th goods on commission, the proceeds to belong to the rubber com panies, and out of the proceeds the Fargo Company was to hav their commissions, and the proceeds to be kept separate fr

moneys of the Fargo Company, but that, as a matter of fact, Fargo Company had for many years treated the moneys re ed as their own, and deposited with their own moneys, and rubber companies had never made any objection or fuss t it?

A. And had settled by note.

Q. And had settled by notes, or without any notes at all, they handled the proceeds pretty nearly as they saw fit?

A. I understand that to be the fact.

Q. The variation was in respect to the proceeds and not in ect to the goods, so far as you remember?

A. I think that is substantially right.

Mr. Beale: That is right, as I understand it.

Q. And your understanding was that having accounted for proceeds in that way for a number of years, it might be ed even against attachments as goods sold; isn't that so?

A. That was the legal view you took of it.

Q. I am asking you if that was not the legal view you took

A. I do not know that I ever discussed the criminal idea h you, but I do—I kind of think, Mr. Beale, that we discussed question in 1896 whether the goods ought not to be put in a le condition?

Mr. Beale: I am coming along to that; you are way ahead of if you will confine yourself to my question we will get along ter.

Q. I ask you the question whether it was not a fact that that siness was done in that way, and that your recollection of it s that it amounted to a sale rather than a consignment, at st for the purposes of criminal proceedings?

A. Yes.

Q. That is correct, isn't it?

A. Yes; so far as it goes, but there was another legal view at was discussed, and I think with you.

Q. What was it?

A. That the goods might be subject to attachment or levy by ebody else.

Q. What makes you think that that particular thing was dis- sed with me?

A. Well, one—I have not any distinct recollection it was, but you hadn't intimated it was not, I should have said most cer- nly it was; I have a good deal of faith in what you say.

Q. I did not mean to intimate anything one way or the other

Testimony of Thomas C. Gratty.

on that subject. I am merely trying to test your recollection and also to help my own in connection with yours.

A. Now, the fact that more stringent measures were taken to protect the goods in January, 1896, would indicate you had discussed that part of it.

Q. That is argument which other counsel will make, but I am trying to get at your reason?

A. No; that is a fact; that is not argument. The fact was that goods must be better protected from that time, and all the goods on hand were sorted out and a man put in charge of them for you.

Q. Can you recall whether in any of these conversations held in January, 1896, the question came up whether the rubber companies could clearly follow the proceeds of sales of consigned goods or not?

A. Could clearly follow?

Q. Yes, and hold them.

A. Up to that time they could not. I guess that was discussed—for goods sold prior to that time and settled for by note

Q. Do you not remember that at that time the suggestion was made, either by Mr. Johnson or by you, that the Fargo Company ought to be more careful in keeping these accounts so that the proceeds of consigned goods could be traced?

A. I think so; I think clearly that suggestion was made, and I am almost sure it was made by you.

Q. As a matter of fact, there had been in practical working a great deal of difficulty in keeping track of proceeds, had there not?

A. Yes, sir.

Q. Debtors of Fargo & Co. were debtors on both leather boots and shoes and rubber boots and shoes oftentimes, were they not?

A. Yes, sir; they were debtors on consigned goods and purchased goods.

Q. A man trading with C. H. Fargo & Co. might owe both for rubber boots and for leather boots—such cases as that would occur, would they not?

A. I should think so. I think there were a great many cases where it was utterly impossible to follow the proceeds.

Q. Please answer my question; there would be such cases where dealers would buy from the Fargo Company both leather goods and rubber goods?

A. Yes.

Now, Mr. Cratty, in using the words "purchased goods," Testimony of Thomas Cratty.
ean goods belonging to the Fargo Company?
Yes, sir.
It was a fact, was it not, they purchased all their rubber and shoes from these rubber companies?
I do not recall that I ever knew that to a certainty, whether ought all their rubber goods there or not.
So far as you know, they all came from these rubber com-
?
Yes.
Many of their leather goods they manufactured them-
?
Yes.
And was it not made apparent to you, and explained to ither in these conversations or at some other time, that s of C. H. Fargo & Co. who had purchased both rubber and leather goods would make a general remittance, so here would be nothing from which to determine how much l be applied, whether on consigned goods or on the leather
I think so.
And that fact, the fact of such difficulty in making the ation, was sometimes discussed, was it not? A. I think : I think it was.
In these conversations?
Yes, sir.
It was in connection with the discussion of that fact and neral subject of consignments, was it not, that I made the stion that, from a legal standpoint, there ought to be more ken to keep the goods and the proceeds separate?
I think so.
You say that Mr. Hotchkiss was put in as custodian of nsigned goods?
Yes, sir.
Did I have anything to do with that?
I do not think you had to do with selecting a man; I think it tha to us to do and I suggested Mr. Hotchkiss.
Do you remember that I participated in any discussions ting the subject of selecting and putting in there a cus-
?
I think you did. I think the agreement was reached be- us that it should be somebody outside of the Fargo house.

Testimony of Thomas Cratty.

Q. You say that Mr. Hotchkiss was not in the employ of the Fargo Company at the time when he was so selected?

A. Never had been.

Q. Do you recall whether there was any considerable quantity of rubber goods consigned by the two rubber companies then in the possession of the Fargo Company? If so, how much?

A. My impression is I learned there was a goodly amount, but anything what the amount was I could not think of saying.

Q. It was a pretty large quantity?

A. Yes, sir; for they owed your people then a large amount of money then in notes and were getting goods, as I understand, right along; there was a large quantity, I think, but would not pretend to say how much.

HORACE C. McCONNELL, called as a witness on behalf of the Eagle Tanning Works, being first duly sworn, was examined in chief by Mr. Manning, and testified as follows:

Q. What is your name in full, Mr. McConnell?

A. Horace C. McConnell.

Q What is your business?

A. The tanning business.

Q. In what company are you associated or connected?

A. The Eagle Tanning Works.

Q. What position did you occupy in that company during the year 1896?

A. President.

Q. Who, if anyone, on behalf of the Eagle Tanning Works had charge of the credits during the year 1896?

A. I had.

Q. Did you have dealings with the corporation C. H. Fargo & Co.?

A. We did.

Q. How long had the Eagle Tanning Works been dealing with C. H. Fargo & Co. prior to their failure in 1896?

A. We dealt with them off and on for ten or twelve years.

Q. Before it was made a corporation you dealt with them?

A. Yes, sir.

Q. There has been filed by the Eagle Tanning Works an intervening petition and verified statement of claim; will you please look at that and state what amount, if any, is now due and unpaid from the C. H. Fargo Company to the Eagle Tanning Works?

A. There is now due two thousand five hundred dollars and twenty-four cents ($2,500.24). Testimony of H. G. McConnell.

Q. What is that for?

A. For leather delivered.

Q. During what period of time was the leather delivered?

A. From April 1 to July 15, 1896.

Q. Is that amount now due and unpaid?

A. Yes, sir.

Q. Does the Eagle Tanning Works hold any security in any way, shape or manner for that indebtedness?

A. It does not.

Q. Did you receive from C. H. Fargo & Co., a corporation, any letters during the year 1896?

A. Yes.

Q. I show you a letter purporting to be from C. H. Fargo & Co. to the Eagle Tanning Works under date of June 11, 1896, and will ask you if that is one of the letters you received from the corporation of C. H. Fargo & Co.?

A. It is.

Mr. Manning: I offer this letter in evidence in connection with this testimony. Said letter reads as follows:

Chas. E. Fargo, Prest. Frank M. Fargo, V. P. & Treas. Edwd. A. Fargo, Secty.

C. H. FARGO & CO.,
Manufacturers of Boots and Shoes,
196, 198, 200 Market Street,

Chicago, June 11, 1896.

Eagle Tanning Works, 212 Lake Street, Chicago, Ills.:

Gentlemen—In reply to your favor of the 10th inst. we incloss check for $492.02, being bills up to April 1st net. We will endeavor to settle the April bills very early. We have taken more time on this than we should and appreciate the fact that you have said so little concerning it.

Yours truly,

C. H. FARGO & CO.,
(Signed) CHAS. E. FARGO.

"C. E. F."

Q. Is it a fact that $492.02 was the balance of the indebtedness of the Fargo Company to the Eagle Tanning Works up to April 1st?

A. It is.

Q. And your indebtedness proven here is all subsequent to April 1, 1896?

A. Yes, sir.

Q. I notice on this letter-head just offered in evidence, which is a lithograph letter-head, it says, "Chas. E. Fargo, president,

Testimony of H. C. McConnell.

Frank M. Fargo, vice president and treasurer, and E. A. Fargo, secretary." Were you or was the Eagle Tanning Works ever advised at any time prior to the failure of the Fargo Company that the officers of that company had been in any way changed?

Mr. Porter: I will object to that; it is immaterial whether they were advised or not. It has not been shown that the witness knew who the officers were before that time—before he received that letter.

Q. In connection with your dealings with the Fargo Company did you know who were the officers of the company?

A. Yes, sir.

Q. Who were they?

A. Charles E. Fargo and Charles H. Fargo, Frank M. Fargo and E. A. Fargo. I cannot say that I knew what particular ones were president; I knew one was president and one was secretary and treasurer.

Q. In your dealings with them you received letters like the one I have shown you here and offered in evidence?

A. Yes, sir.

Q. In due course of business?

A. Every few days.

Q. And that letter discloses who was the treasurer and who was the secretary, does it not?

A. Yes, sir.

Q. Well, you knew of the firm of C. H. Fargo & Co. before the father, C. H. Fargo, died, did you not?

A. Yes, sir.

Q. What did you know as to what he did with his estate that was invested in the firm of C. H. Fargo & Co.?

Mr. Porter: Objected to as immaterial and irrelevant.

The Master: Answer subject to the objection.

A. We understood that Mr. C. H. Fargo gave his entire business to his sons.

Q. These three sons that you have named?

A. These three sons; yes, sir.

Q. And how much did you understand, or the trade understand, was left to those sons by the father?

(Same objection; same ruling.)

A. It was generally understood that the amount left to them was $400,000.

Mr. Porter: I move that that be stricken out as not responsive to the question, and because it is not proper for the witness to testify what was generally understood.

Testimony of H. C. McConnell

he Master: That may go in subject to the objection.

Did you ever know, or did the Eagle Tanning Works ever w, that any one had charge of the affairs of C. H. Fargo & or was running its business, outside of those three Fargo s you have named?

No, sir.

It appears by the testimony taken in this case, and cipally by the testimony of Charles E. Fargo, that on or t January 6, 1896, the corporation of C. H. Fargo & Co. was arrassed financially, and that a representative of the United es Rubber Company, and a Mr. Sadler, representing L. Can & Company, were here with an indebtedness amounting to thing over $160,000, and that at that time the question came s to securing these two large claimants, and it was dis- ed between the solicitors for the United States Rubber Com- and L. Candee & Company, and the Fargos and their at- ys, regarding the giving of a chattel mortgage on the entire of the corporation. Did you ever hear anything about that?

No, sir.

It further appears that on or about January 6 or 9, 1896, orporation of C. H. Fargo & Co. changed its board of directors hat at that time there were elected as directors, George C. son, Tiffany Blake, Buell McKeever, Frederick B. Fuller and rt E. Porter. Did you ever know anything about that?

No, sir.

Did you know either of these gentlemen?

I did not.

Did you ever know that they had anything to do with C. rgo & Co.'s business?

I never knew they had anything to do with it.

It further appears from the testimony of Charles E. Fargo on or about January 6 or 9, 1896, the corporation gave the d States Rubber Company its judgment note payable on nd for about $140,000, and to L. Candee & Company a judg- note for some fifty thousand dollars, payable on demand. ou ever know anything about that?

No, sir.

Had you known of the fact of the interviews relating to ving of chattel mortgages by the corporation of C. H. Fargo , or the electing of these directors, and the giving of these ent notes, would the Eagle Tanning Works have sold any on credit to the corporation of C. H. Fargo & Co.?

Porter: Objected to as clearly incompetent, immaterial,

Testimony of H. C. McConnell.

and irrelevant, what the Eagle Tanning Works would have d under a certain state of things. There is nothing in the rec to show that any inducements or representations of any kind, statements, were made to the Eagle Tanning Works to indu credit, and it is incompetent for them to show that if they h known something they did not know that they would have giv this credit.

The Master: I suppose that under the practice, Mr. Pom the only way will be to let the witness answer the question, an if the testimony is irrelevant, it can be disregarded. Y may answer the question, if you please, Mr. McConnell.

A. No, sir.

Q. It appears by the testimony of Mr. Charles E. Fargo th the giving of these judgment notes by the Fargo Company, b agreement among the parties, was to be kept secret; did yo ever know anything about that?

A. No, sir.

Q. It further appears by the testimony of Mr. Fargo that th naming of these five directors on January 6 or 9, 1896, was giv to Mr. Beale, of the law firm of Isham, Lincoln & Beale, and tha the judgment notes mentioned, one for some $140,000 and th other for $50,000, were left with Mr. Beale and at his option whe judgments should be entered upon them. Did you ever kno anything about that?

A. No, sir.

Q. Had you known that fact, would the Eagle Tanning Work have extended any credit to the Fargo Company after the obtain ing of any such knowledge?

(Objected to as incompetent and immaterial; same ru ing.)

A. No, sir.

Q. Did you know on June 11, 1896, when this letter was re ceived, or did the Eagle Tanning Works know, that Buell Mc Keever was treasurer of the Fargo Company?

A. No, sir.

Q. Did you know at that time that Buell McKeever was sec tary of the company?

A. No, sir.

Q. Had you ever had any intimation of such a change having been made?

A. No, sir.

Q. It further appears by the corporation record book of C. E. Fargo & Co., which has been offered in evidence, on page 28, the

Testimony of H. C. McConnell.

ds which I will now quote: "This company hereby prom- s and agrees that whenever it shall be found necessary for is company to suspend business, it will then assign and trans- to said Johnson for said rubber companies as additional se- rities for their claims against this company, all such book ac- nts, credits, bills receivable, and choses in action as shall then owned by or due to this company." And it appears that is a resolution entered under date of January 6, 1896, and ed by Charles E. Fargo, F. M. Fargo and E. A. Fargo. Did ever know anything about such an agreement as that?

A. No, sir.

Q. Had you known that there was such an agreement out- nding, leaving it to their option—leaving to the option of Mr. ale when judgment should be entered on these notes, and at these accounts and bills receivable would be assigned henever there was judgment entered, or whenever it was thought ecessary for the company to suspend business, would the gle Tanning Works then have sold any goods to C. H. Fargo o.?

(Objected to as incompetent, irrelevant and immaterial; same ruling.)

A. No, sir.

Q. It further appears by the testimony that while Mr. Sadler d Mr. Johnson were here representing the two rubber com- ies, that in addition to taking these judgment notes and put- g in these five directors and entering into the resolution which ave read to you, that the two rubber companies took out of possession of C. H. Fargo & Co. something like $125,000 or 0,000 worth of goods which it is claimed had been sent to C. Fargo & Co. prior to that time, and they were set apart and upon one of the floors of the store occupied by C. H. Fargo o., a corporation, and a custodian put in possession of these ds by the two rubber companies, and that that custodian re- ined in possession of such goods for the two rubber companies il the Fargo Company, a corporation, failed. Did you know thing of a circumstance like that?

A. No, sir.

Q. Had you known of that cirsumstance would the Eagle nning Works have extended any credit to the Fargo Company?

(Same objection; same ruling.)

A. No, sir.

Evidence taken before Master.

Testimony of H. C. McConnell.

Cross Examination by Mr. Porter.

Q. Did C. H. Fargo & Co. owe the Eagle Tanning Wo thing on January 6, 1896, and if so, how much?

A. They owed them something; what the exact amo could not tell you without referring to the books.

Q. Is it not a fact that C. H. Fargo & Co. paid to th Tanning Works a considerable amount of money after 6, 1896, in addition to the item of $492, to which you have

A. The amount was small; I cannot tell you that wit records.

Mr. Manning: We state that all bills prior to April paid.

Q. Did you know who the directors of C. H. Fargo & prior to January 6 or 9, 1896?

A. We knew that the three Fargo boys were directors.

Q. Did you know who the directors of the company we

A. Not all of them; no, sir.

Q. Did you know anything about the affairs of C. H. Co. prior to January 9, 1896?

A. Nothing further than what I have stated.

Q. Did you know what, if any, agreements they ha prior to January 6, 1896, with any person or persons?

A. No, sir.

Q. Did you know what notes, if any, they had given January 6, 1896?

A. No, sir.

Q. Did you know prior to January 6, 1896, whether or had on hand consigned goods from any person or persons United States Rubber Company or L. Candee & Company

A. No, sir.

Q. Would you have given credit to C. H. Fargo & C January 6, 1896, if you had known that the company o rubber companies the amount then owing to them, h not given judgment notes for it?

A. I don't think we would.

Q. You do not think you would?

A. No.

Re-direct Examination by Mr. Manning.

Q. But the reason why you would not have extended to them had you known of the indebtedness, is it not, is h of the large amount shown to be due—nearly $200,000?

A. On account of the large amount to one person?
Q. Yes; that is the reason, is it?
A. I did not because of the amount of the indebtedness but because it was in the hands of one party. That would have been my objection.
Q. And you would have refused to extend the credit whether that indebtedness was represented by judgment notes or otherwise, would you?
A. That is a question that I would not answer in this position but I think I would.

Introduction of Complainant's Exhibit 8.

Mr. Manning: In behalf of Wilder & Company, whose claim was filed before the master as claim No. 30, filed March 8, 1897, and refiled March 13, 1897, I offer in evidence a certified copy of the judgment entered in the Superior Court of Cook County, Illinois, on the 15th day of September, 1896, in favor of Thomas E. Wilder and John E. Wilder, against C. H. Fargo & Co., amounting to $4,584.95, and costs, and ask to have it transcribed into the record.

Mr. Porter: I object to the offer on the ground it does not come within the purview of this reference.

The Master: Said copy of judgment is received in evidence subject to the foregoing objection, and is marked "Complainant's Exhibit No. 8." (See p. 214.)

It is stipulated that the proof of this claim shall not be conclusive upon the other parties in interest, but if the claim be attacked or denied, the claimant must have due and proper notice to maintain the claim.

Introduction of Complainant's Exhibit 11.

Mr. Newman: In response to a written notice, counsel for the two rubber companies have produced a duplicate original contract made between the rubber companies and the Metropolitan Bank on August 6, 1896. I now offer said contract in evidence.

The Master: Said contract is received and marked Complainant's Exhibit No. 11. (p. 213.)

Testimony of Charles Perkins.

CHARLES PERKINS, a witness called on behalf of Wilder & Co., being first duly sworn, was examined in chief by Mr. Manning, and testified as follows:

Q. What is your name in full?
A. Charles Perkins.
Q. What is your business?

Testimony of Charles Perkins.

A. I am manager of the credit department of Wi
wholesale leather.

Q. Wilder & Co., dealers here in Chicago?

A. Yes, sir.

Q. Did Wilder & Co., during 1896, and prior thereto,
ings with C. H. Fargo & Co.?

A. Yes, sir.

Q. What business do Wilder & Co. do—what goo
manufacture or deal in?

A. They manufacture cut soles and things of that
and job leather.

Q. And to what class of trade did they sell their go

A. Shoe manufacturers and leather dealers.

Q. And was it in that capacity they dealt with C.
& Co.?

A. Yes, sir.

Q. Did Wilder & Co. carry on its business with Fa
some of it, by correspondence?

A. Yes, sir.

Q. From what point principally?

A. Dixon, Illinois.

Q. Did they receive any letters in connection with t
ness from C. H. Fargo & Co. at Dixon, Illinois, during t

A. Yes, sir.

Q. Is the letter I now show you, dated Dixon, Illin
ary 27, 1896, on a letter-head which appears to be a l
letter-head, with "Charles E. Fargo, president, Frank
vice president and treasurer, and Edward A. Fargo, s
a letter received by Wilder & Co., in due course of busin

A. Yes, sir.

Q. From Dixon, Illinois?

A. Yes, sir.

Mr. Manning: I offer this letter in evidence.

Mr. Beale: Objected to as not being a letter signed by
ber of the corporation of C. H. Fargo & Co.

Said letter is received in evidence, and is in wo
figures, as follows, to wit:

"C. H. FARGO & CO.,
(Incorporated.)
Manufacturers of Boots and Shoes.

Chas. E. Fargo, Prest.
Frank M. Fargo, V. P. & Treas.
Edwd. A. Fargo, Secty.

Dixon, Ill., Jan. 27, 1896.

Wilder & Company, 212 Lake Street, Chicago, Ill.:

Gentlemen—Complying with your request, we return to-day via C. N. W. R'y, the barrel of No. 2, B. 2, counters. We are sorry we are compelled to send them back, and feel assured that after examining the counters you will be decided to have us return them. The only basis on which we can judge counters at a certain price is by comparing them with what we get from other firms. We think that we will have no trouble after you once get assorting counters more even to prevent mixing various sizes in the barrels.

Respectfully,

C. H. FARGO & CO.,
(Signed) J. C. JOSLYN.

Dictated by J. C. J."

Q. I show you letter dated April 25, 1896, being another lithograph letter-head with "Charles E. Fargo, president, Frank M. Fargo, vice president and treasurer, and Edwd. A. Fargo, secretary," and ask you if that is another letter received in due course of business?

A. Yes, sir.

Mr. Manning: I offer this letter in evidence.

(Same objection by Mr. Beale.)

Said letter is received in evidence, and is in words and figures as follows, to wit:

Chas. E. Fargo, Prest. — Frank M. Fargo, V. P. & Treas. — Edwd. A. Fargo, Secty.
Factory, Dixon, Ill.

C. H. FARGO & Co.,
Manufacturers of Boots and Shoes,
196-198-200 Market Street, Chicago.

Dixon, Ill., April 25, 1896.

Wilder & Co., 212 Lake St., Chicago, Ill.:

Gentlemen—We wire you to ship freight, to-day, sure, 15 cases eight iron women's new die. The shipment you made on April 23d of 18 cases of 4 C S] oak soles at 15c, the pattern is too small for our bike last, but the two cases of No. 1's at 14c on the new die are all right for shape and length. Placing the order through the house, we gave them paper pattern, and supposed you had the pattern to figure on. It will be impossible for us to use the 18 cases unless we are able to run up on the large sizes and return the small sizes. These would have to run at least 5 to 9. The writer expects to be in Chicago by the middle of next week, and will see you personally.

Respectfully,

C. H. FARGO & CO.,
(Signed) J. C. JOSLYN.

Dictated by J. C. J."

Q. And another dated May 26, 1896, with "Charles E. Fargo, president, Frank M. Fargo, vice president and treasurer, and

PAGE CUT OFF

Testimony of Charles Perkins.

Edward A. Fargo, secretary," and asked if that is another letter received in due course of business?

A. Yes, sir.

Mr. Manning: I offer this letter in evidence

(Same objection by Mr. Beale.)

Said letter is received in evidence, and is in words and figures as follows, to wit:

"Chas. E. Fargo, Prest. Factory, Dixon, Ill.

Frank M. Fargo, V. P. & Treas.

Edwd. A. Fargo, Secty.

C. H. FARGO & CO.,
Manufacturers of Boots and Shoes,
196-198-200 Market Street, Chicago.

Dixon, Ill., May 26, 1896.

Wilder & Co., 212 Lake St., Chicago, Ill.:

Gentlemen—We wire you to express us to-day a bag of men's flexible Goodyear innersoles. We take it for granted that you understand just what we mean. It is the flexible sole you sold the writer while in Chicago. We are short of innersoles, and think we will be able to make a few of these go until you can fill our regular order.

Respectfully,

C. H. FARGO & CO.,
(Signed) J. C. JOSLYN

Dictated by J. C. J."

Q. Were the goods shipped to Fargo & Co. by Wilder & Co. under these letters—these orders?

A. Yes, sir.

Q. Were the goods for which Wilder & Co. now make claim here in this case goods which were supplied by virtue of these orders being sent?

A. A portion of the account; yes, sir.

Q. Did Wilder & Co. at any time between January 6, 1896, and August 6, 1896, know of any change in the officers of the Fargo Company corporation?

A. No, sir.

Q. Were they ever advised of any change by any person connected with the Fargo Company?

A. No, sir; not so far as I know.

Q. Were Wilder & Co. at any time notified between January 6, 1896, and August 6, 1896, that a young lawyer in Isham, Lincoln & Beale's office by the name of Buell McKeever was treasurer of this company?

A. No, sir.

Q. Were they ever notified that he was secretary of this company?

A. No, sir.

COPY BOUND CLOSE IN CENTER

)id you ever know it prior to August, 1896?
So, sir.
Had Wilder & Co. known of the change of the officers
rank M. Fargo, treasurer, to Buell McKeever, treasurer,
Wilder & Co. have extended any credit to Fargo & Co.?
Beale: Don't you think that is going a little far, Mr.
g, to ask a question of that sort?
Master: That involves a mental conclusion of somebody
n't it?
Would you as credit manager of Wilder & Co.?
Beale: That is the same thing. I object to that.
Had you known that Buell McKeever was secretary and
r from January 6, 1896, to August, 1896, would you have
d any credit to the corporation of C. H. Fargo & Co.?
Probably not, sir.
)id you know in January, 1896, of an arrangement con-
ed being made, under and by which arrangement Fargo
ere to give a chattel mortgage to the United States Rub-
pany and L. Candee & Company?
So, sir.
Beale: I will save you labor and time on that. I will
e never knew about it, or heard anything about it in any
ape or manner. We do not claim that any of them knew
g about it.
ad you known on January 6, 1896, that Fargo & Co. were
financial straits that they contemplated giving a chattel
e on their stock of merchandise, would Wilder & Co., or
the representative of Wilder & Co., have extended any
Fargo & Co. after that date?
bsolutely, no.
ou have testified that these three letters were received
rdinary course of business?
es, sir.
ho is the man, if you know, whose name appears in red
ottom, J. C. Joslyn?
r. Joslyn was the factory superintendent.
t what place?
t Dixon, of Fargo & Co.'s plant.
id you know him?
h, yes, sir.
id you know of his acting in that capacity for Fargo &

es, sir.

Testimony of Charles Perkins.

Q. And during your dealings with Fargo & Co. was that the usual way the letters were signed in transacting the business?

A. It was the common way for the letters to be signed that we received from Dixon.

Q. In the letter of May 26, 1896, the letter recites: "We wire you to express us to-day a bag of men's flexible Goodyear inner soles. We take it for granted that you understand just what we mean. It is the flexible sole you sold the writer when in Chicago." To whom does that refer where it says the writer?

A. To Mr. Joslyn, the superintendent, who very frequently visited the city and placed his orders personally.

Q. With Wilder & Co.?

A. With Wilder & Co.

Cross-Examination by Mr. Beale.

Q. How long have Wilder & Co. done business with C. H. Fargo & Co.?

A. I should say probably for nearly twenty years.

Q. Then they did business with the firm of C. H. Fargo & Co. prior to the establishment of the corporation of C. H. Fargo & Co.?

A. Yes, sir.

Q. How long have you been connected with Wilder & Co.?

A. Nearly thirteen years.

Q. Is Wilder & Co. a corporation or a firm?

A. A firm.

Q. Do you know how the business relations with the firm of C. H. Fargo & Co. originated?

A. No, sir.

Q. Do you know whether they grew up originally by personal intercourse, or by correspondence—letters?

A. You are speaking of the commencement?

Q. The first transactions?

A. No, sir; my memory would not tell anything about that. I think they were on the books when I went to the house.

Q. How far were there transactions at any time between your company and C. H. Fargo & Co. which were founded on personal intercourse, or in which personal intercourse formed a part of them, as, for instance, any member of C. H. Fargo & Co. coming to your place of business personally, or your people going there?

A. Well, they rarely came to our place, or we very rarely went there.

. Most of the transactions were by correspondence?
. I should say from my recollection of it that most of the
rs were placed by Mr. Joslyn himself, or by a man who
e in from the store.
From what store?
From Fargo's store.
What man was that?
I have forgotten what his name was, sir.
Did you come in contact in your business transactions
the Fargo brothers themselves?
Rarely.
But sometimes you did?
Yes, sir. In the matter of money, always.
With what ones?
With Mr. Charles Fargo and with Mr. Frank Fargo.
What did you have to do with Edward A. Fargo?
I don't even know Edward A. Fargo myself.
Never saw him?
No, sir.
You knew that Charles E. Fargo was preiden ?
Yes, sir.
He was regarded as the active controlling member in the
rn, was he not?
I think so.
During all these years of business intercourse on the part
r house with the Fargo Company, were there any troubles—
erious troubles—differences of any kind?
Not that I know of.
They usually paid their bills with fair promptness, did
ot?
Well, reasonably fair.
And until their failure you had never had any serious
ications with them?
No, sir.
Had you ever made any inquiry about them in recent
o find out who the officers of the corporation were?
I made every inquiry that I knew how to make.
What inquiries did you make?
I made inquiries of representatives of credit houses—credit
ations rather—in the east whenever they were here. They
a practice of visiting here two or three times a year. And
lesmen or credit men of other houses, whenever an op-
ity offered.

Testimony of Charles Perkins.

Q. How many times a year would that be?

A. Well, I could not tell you with any definiteness, but wouldn't be surprised if it was twenty-five or fifty.

Q. Fifty times a year?

A. I wouldn't be surprised if it was.

Q. Fifty times a year you made inquiry?

A. I prefer to use the smaller number.

Q. About twenty-five times a year you made inquiry to a certain who the officers of C. H. Fargo & Co. were?

A. I wouldn't put the answer down quite so definite as that sir. I would prefer to say that I made all the inquiries regarding Fargo & Co. that occurred to me. Just what they were I could not say.

Q. Can you say that you ever inquired who the board of directors of C. H. Fargo & Co. were?

A. No, sir; not regarding the board of directors.

Q. Did you ever inquire, so far as you know, about the personnel of the board of directors of C. H. Fargo & Co.?

A. I should presume I had.

Q. I did not ask you what you presume. I asked you whether you could remember if you ever did?

A. I would not want to give a definite answer on that question.

Q. In other words, you do not remember that you ever made a single inquiry as to who the individuals were composing the members of the company?

A. No, sir.

Q. How many inquiries can you ever remember making as to who the secretary of the company was?

A. I couldn't tell you.

Q. Did you ever make any?

A. Yes, sir.

Q. Please tell us the year when you made them?

A. I couldn't tell you when I made them.

Q. Give your best recollection.

A. I couldn't tell you when I made them. I have no doubt have made them a good many times in general talk as to the composition of the concern, and the opinions of the people that I was talking with; information that they had and that they had been recently able to obtain, it being customary to exchange all that kind of information.

Q. Will you swear here that you ever made an inquiry in the year 1895 as to who the secretary of C. H. Fargo & Co was?

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I wouldn't swear that; no, sir.
You would not?
No, sir.
Will you say that you ever made such an inquiry in the 1894?
I believe I did, but I wouldn't swear to it.
What makes you believe you did.
Because it would be natural in the course of the conver- ns that were commonly coming up regarding the concern rgo & Co.
For you to make inquiry about a concern that you dealt factorily with for twenty years?
Yes, sir.
Why would you make inquiry about the secretary of that rn?
Because the house had been regarded suspiciously for y years. When I say "suspiciously," I don't mean in the of character, but being a house that was weak.
How many years had that been?
Well, I should say for the last three or four years; ever the panic, perhaps. They belonged to the class of houses nquiries were made about by all credit men whenever they chance.
For three or four years?
Yes, sir.
What do you understand the secretary's duties of a cor- on to be?
A secretary's duties—I should naturally suppose a secre- duties would be to attend—to be the master of the strictly business.
The secretary would attend to the office business?
I should suppose it to be. I have never had any personal of that kind to carry out.
How far would you suppose that the management—policy business affairs—of a corporation would be run by the ary?
would naturally suppose that the secretary would be r with every detail of the business in the concern that he nnected with.
did not ask you that. I asked you about his manage- about his policy?
should suppose his management would be very largely d by the circumstances of the individual concern. In

Testimony of Charles Perkins.

some concerns the secretary might be the general manager. In other concerns he might have very limited duties.

Q. Do you understand that in this corporation the secretary was the general manager in any way?

A. Charles E. Fargo and Frank M. Fargo, in my understanding of the concern, were the prominent men.—the prominent men. Edward A. Fargo, as secretary, I knew very little about personally.

Q. And yet you are testifying here that you made inquiries, made them frequently—about Edward A. Fargo and about his being secretary?

A. I speak for all, taking the line, not individually picking out him.

Q. Now, what you mean to say is, that in all probability, judging from your usual course of business, that you did make inquiries about the secretary?

A. That is just what I mean to say.

Q. That, as a matter of fact, you cannot positively testify to a single instance when you are sure you made inquiry about the secretary?

A. No, sir.

Q. Why do you say that if you had known merely the one fact that there had been a change in the secretary of the company, you would not have given them credit?

A. I will explain that to you, sir. If I had known that there had been any sort of a change in the make-up of their concern it would have assumed great importance in my mind, owing to their peculiar character as a credit risk.

Q. Even in the secretaryship?

A. Even in the secretaryship; yes, sir. It would have assumed great importance in my mind.

Q. That is the only reason that any circumstance of that sort would have led you to make an inquiry? Any change of any kind would have led you to make some inquiry?

A. It would, most assuredly: yes, sir.

Q. What was the indebtedness of the Fargo Company to your concern on the 6th day of January, 1896?

A. It was—I can't remember the figures exactly, but it was between $1,270 and $1,275; about twelve hundred and seventy-five dollars ($1,275).

Q. What was it on the 6th day of August, 1896?

A. It was something like forty-six hundred dollars ($4,600) I think that was the figure we proved up.

Testimony of Charles Perkins.

Q. The correct figure is given in the affidavit?
A. Yes, sir.
Q. How much money was received from the Fargo Company between those two dates?
A. I couldn't remember, sir.
Q. Was any?
A. Yes, sir.
Q. Give the best judgment you have at this moment—the best impression?
A. It would be a mere guess. Let me see; there might have been possibly a couple of thousand dollars paid in that time, just making a running guess at it.
Q. You have no distinct recollection?
A. No, sir; I have not; I just make a running guess at it.

Testimony of John A. Cooper.

JOHN A. COOPER, called as a witness on behalf of the complainant, having been duly sworn, was examined in chief by Mr Newman, and testified as follows:

Q. Have you examined the books of the Fargo Company for the purpose of ascertaining when the liabilities of the Fargo Company to divers creditors, represented by Newman, Northrup & Levinson, were incurred or created?
A. Yes, sir.
Q. Please give the names of the creditors and the dates when the liabilities were incurred, and the amounts owing to each creditor by the Fargo Company, as shown by the company's books?
A. I have stated on the statement herewith the number of the ledger folio, the name of the account or claimant, the amount of their claim, and the months in which the indebtedness was incurred, approximately. This statement gives the claims represented by Newman, Northrup & Levinson.

(Said statement is in words and figures as follows, to wit:)

Ledger folio.	Claimant.	Amount.	Incurred.	Remarks.
44	Amer. Oak Leather Co.	$13,160 00	March to June, '96.	B/P 7,000.
47	Barbour Bros. Co.	407 94	May and June, '96.	
21	Boston Blacking Co.	699 75	April to July, '96.	
36	Colborn, Fuller & Co.	692 56	Sept. to March.	March dating.
40	Cycling Gazette	100 00	May to July.	(a) (j)
34	Chase, Merritt & Co.	504 25	August to March.	March dating.
42	Carson-Pirie Monthly Co.	54 50	March, '96.	(j)
35	Continent Shoe Co.	32 88	May and June.	
49	Calvert Lith. & Eng. Co.	315 00	June, '96.	(j)
52	Carver Cotton Gin Co.	53 10	March and April.	
26	B. E. Cole & Co.	2,500 00	February and March.	B/P 2,500

54	Crooks, Root & Co.	96	30	March, '96.		
353	Consol. H. M. Lasting Mach. Co.	285	33	May to July.		
352	Consumers' Box Mfg. Co.	400	46	June and July.		
238	Dry Goods Reporter Co.	100	00	June, '96.		
22	Easton Boot & Shoe Co.	5,562	67	February to May.	B P 5,318.57	
16	C. C. Farwell & Co.	1,957	50	January to April.	March dating. B P 1,977.08.	
18	Field B. A. & Co.	729	74	December to May.	March dating.	
304	Farnsworth, Hoyt & Co.	520	95	May to July.		
277	Fletcher Mfg. Co.	1,181	80	May to July.		
514	I. P. Farnum.	45	45	June and July.	(b)	
404	H. M. George & Co.	199	50	May, '96.	(j)	
440	Goodyear Rubber Co.	70	00	May, '96.		
393	A. F. Gallun & Sons.	409	51	June and July.		
233	R. J. Gunning & Co.	617	14	June, '96.		
372	M. L. Miller & Sons.	1,609	52	April to July.		
405	Hillard & Merrill.	744	30	May and June.	(j)	
302	Lambeau Leather Co.	6,961	76	June to July.	B P 2,265.91	
239	J. & H. Mayer.	292	00	June, '96.	(j)	
347	W. J. McBride.	78	95	April to July.		
366	Milwaukee Tack Co.	42	38	June, '96.		
375	H. Michaels & Co.	216	76	April to July.	(c) (j)	
387	A. J. Marcus & Co.	273	40	April, '96.	(j)	
385	Pliable Shoe Co.	59	63	June and July.	(j)	
446	Rousmaniere, Williams & Co.	184	48	June and July.		
408	Shattuck & Binger.	705	00	February to July.	(d) (j)	
391	Singer Mfg. Co.	74	72	June, '96.		
520	T. J. Shay & Co.	55	80	May to July.	(e)	
38	Stone, Bills & Hawley.	219	00	February and March.		
52	W. W. Spaulding.	1,160	84	August to March.	Sept. and March dating. (f)	
363	Spring, Virtue & Co.	186	50	January to June.		
20	A. W. Shaw & Co.	2,470	00	March and April.	B P 2,470.	
409	Tubular Rivet & Stud Co.	1,069	77	May to July.	(g)	
390	Thilmany Pulp & Paper Mills.	115	70	April to June.		
441	Tripp Giant Leveler Co.	121	50	March and April.		
243	University of Chicago Monthly.	33	17	July, '96.		
418	E. H. Van Ingen & Co.	1,078	09	February to June.	(j)	
200	Geo. H. Van Pelt.	1,115	98	May to July.		
231	Weir Bros. Paper Co.	14	29	July, '96.		
388	New York Shield Co.	254	83	April to June.	(i)	
6	Estabrook-Anderson Shoe Co.	10,000	00	January to April.	B P 10,000.	
	Goldsmith, Rosenbush & Levie.	43	35		(k)	
	Regent Mfg. Co.	233	87		(k)	
	Wachusetts Mills.	175	00		(k)	
	L. A. W. Bulletin and Good Roads	462	10		(k)	
	Gus. Weimerstrom.	655	00		(k)	
	Grand View Hotel	1,000	00		(k)	

(a) Ledger balance, $ 180 00.
(b) " " 52 08.
(c) " " 460 00.
(d) " " 1,189 25.
(e) " " 57 55.
(f) " " 1,277 84.
(g) Ledger balance, $1,079 77.
(h) " " 1,121 78.
(i) Assessment reported unpaid.
(j) New accounts since Jan. 6, '96.
(k) Accounts not found on Ledger.

Complainant's Evidence—Testimony.

Cross-Examination by Mr. Porter.

Q. Please state how these figures set opposite the respective mes were arrived at?

A. Taken from the list of claims published by the receiver of Fargo Company.

Q. These are the amounts of the respective claims as shown the ledger?

A. No; they differ from the ledger; you will find foot notes that er to the differences.

Q. As qualified by the foot-notes, these are the balances own upon the ledger?

A. Yes, sir.

Q. How did you find out that the claim of Barbour Brothers mpany, the second one on the list, accrued during the months May and June, 1896?

A. I applied all the payments and offsets as far back as they l go, then the remainder of the indebtedness appears to be March and April, or May and June, whatever it may be.

Q. Isn't it true that the books showed that the Fargo Com y was indebted to these claimants prior to January, 1896?

A. Why, yes; certainly.

Q. Then you cannot tell—

A. That is, the balances applied to the months of the in rred indebtedness.

Mr. Newman: Illustrate, Mr. Cooper.

The Witness: For instance, a man may buy every month 0 worth of goods, until it runs up to $1,200; if he has, the other side, only paid $300, the last nine months would be at is referred to in that statement: in other words, I have plied the offsets as far back as they will go, and wiped out the ebtedness.

Mr. Beale: Applied them to the oldest indebtedness?

The Witness: Yes, sir.

Q. So it was by application of the payments in that way that arrived at the conclusion that the amounts here stated were urred after January, or upon the dates mentioned?

A. Yes, sir; at the months I have applied them.

Q. Did you make any calculation as to whether the total—

Mr. Newman: Excuse me, Mr. Porter, let me ask one ques- n. Mr. Cooper, do you mean just what your answer implies, do you mean that you credited the payments on the oldest in- tedness, and then reckoned up the remaining indebtedness

Testimony of John A. Cooper.

and calculated the date when that indebtedness was incurred by the entry in the ledger?

The Witness: I do not see the difference, Mr. Newman.

Mr. Newman: Well, there is a good deal of difference. How can you determine when this indebtedness was incurred unless there is a date opposite each item of the ledger?

The Witness: Of course there is a date opposite the entry in the ledger.

Mr. Newman: Yes; that is what I am getting at.

Mr. Beale: Let me see if I understand what you mean. Suppose there was $1,000 bought in March, and $1,000 bought in June, and there was $1,000 paid; you credited that, of course, on the gross March and not on the indebtedness of June?

The Witness: Yes, sir.

Mr. Newman: That makes it more clear. That is the method you pursued?

The Witness: Yes, sir. The outstanding indebtedness is of the latest date.

Q. Isn't it true that many of these creditors were paid more money upon their running accounts after January, 1896, than the balance of the account amounted to at that time?

A. Good many of them were.

Q. So that the general indebtedness to these creditors was decreased between January 6 and August 6, 1896?

A. In some cases.

Q. Have you calculated whether there was an increase or decrease in the total indebtedness to these creditors represented by Newman, Northrup & Levinson, between January 6 and August 6, 1896?

A. Not accurately, no.

Q. Did you make an estimate of that?

A. I made an estimate of it, yes.

Q. With what result?

A. That the indebtedness to those claimants on that exhibit I have just filed is from fifteen to twenty per cent. less than it was on January 6, 1896.

Mr. Beale: Those claims as a whole?

The Witness: Yes; the total referred to on those sheets.

Re-direct Examination by Mr. Newman.

Q. In many cases, Mr. Cooper, was not the indebtedness of the creditors represented in this list which you have produced wholly new? After January 6, 1896?

A. In some cases it was.

Q. And is it not true that in other cases the indebtedness was largely increased over what it had been on and prior to January 6, 1896?

A. Yes, sir; in some cases.

Q. Is it not a fact, Mr. Cooper, that in many instances the Fargo Company, between January 6 and August 6, 1896, obtained long extensions of then past due indebtedness.

A. I cannot say, Mr. Newman; I have not got the bills payable book; I never saw it.

Q. Were many of the open book accounts settled by notes?

A. Yes, sir.

Q. That would indicate that when the account proper matured an extension was obtained by means of promissory notes, would it not?

A. A good many accounts for merchandise were settled by notes. As to whether they were settled when they matured or not, I could not say.

Mr. Smith: I offer in evidence a transcript duly certified of the judgment of the American Oak Leather Company against C. H. Fargo & Co., in the Superior Court of Cook County, Illinois, together with the execution issued thereon and the return of said execution. Introduction of Complt's. Exhibit 9.

The Master: Said transcript is received and marked "Complainant's Exhibit No. 9." (See, p. 211.)

Mr. Newman: I offer in evidence 134 letters written by the Fargo Company to its customers and creditors between January 1 and August 6, 1896. The contents of these letters relate to the business transacted by the Fargo Company, ordering merchandise, purchasing goods, explaining how they wanted their goods manufactured and other details relative to running and operating the business in which the Fargo Company was then engaged. All these letters are upon the letter-heads of C. H. Fargo & Co., and upon all the letters appear the names of the officers of the Fargo Company with their respective offices. For the purpose of not encumbering the record needlessly, we suggest to the master that one letter-head be copied into the record, as all the others are exactly alike, with the dates of the various letters and the names of the parties to whom they were written. Introduction of Complt's. Exhibit 10.

The Master: One of said letter-heads and also a list showing the respective dates of all of said letters and the names of the respective parties to whom they were written are received in

evidence and marked "Complainant's Exhibit No. 10." (See, p. 212.)

Stipulation re State Court receivership over assets of C. H. Fargo & Co.

Mr. Newman: We offer in evidence the certified copy of the record of the Circuit Court of Cook County, Illinois, showing the filing of a bill of complaint in that court by the Lambeau Leather Company on the 7th day of August, 1896, against C. H. Fargo & Co., the appointment of Frank E. Makeel, receiver, and the orders entered in that cause with respect thereto.

The Master: As said records are very voluminous, by agreement of all parties they are not received in evidence, and the following stipulation is entered into in lieu thereof:

It is stipulated and agreed by all parties to this cause:

1. That on August 7th, A. D. 1896, the Lambeau Leather Company filed its bill of complaint in the Circuit Court of Cook County against substantially the same parties who are parties defendant in this cause; and that said bill (together with an amended bill also filed therein) contains substantially the same allegations as the bill of complaint filed in this court by the American Oak Leather Company.

2. That on said 7th day of August, 1896, an order was entered in said cause by said Circuit Court of Cook County appointing Frank E. Makeel receiver of the defendant C. H. Fargo & Co. and of all its property and assets of every kind and nature, and that said Frank E. Makeel, as such receiver, duly forthwith qualified by giving bond as required by the order of appointment, and thereafter acted as such receiver under the orders and direction of the Circuit Court of Cook County, Illinois, from the time of his appointment until January 4th, 1897, on which date, by the direction of the United States Circuit Court, said suit of Lambeau Leather Company was dismissed without prejudice on motion of complainant, and thereupon said Frank E. Makeel was discharged as receiver.

3. That in the order appointing said Frank E. Makeel receiver as aforesaid, the officers of said C. H. Fargo & Co. were directed and commanded by the Circuit Court of Cook County, Illinois, forthwith to make, execute and deliver unto said Frank E. Makeel, as such receiver, an assignment and conveyance of all the property and assets, real, personal and mixed, legal and equitable, and choses in action belonging to said C. H. Fargo & Co., or in which it was or could in anywise be interested, and also to forthwith deliver to said Frank E. Makeel, as such receiver, the actual possession of all the property and assets of every kind and character of or belonging to said C. H. Fargo & Co., or in which it was or might be inter-

ated, wherever situate or found, and all books, papers and vouchers relating thereto; but said order was never complied with and said receiver never obtained possession of any property or assets whatever.

Stipulation re State Court receivership over assets of C. H Fargo & Co.

4. That on the 15th day of August, A. D. 1896, the American Oak Leather Company, by leave of the Circuit Court of Cook County Illinois, filed its intervening petition in said cause of the Lambeau Leather Company vs. C. H. Fargo & Co. et al., pending in said Circuit Court of Cook County, and that the material allegations in said intervening petition are substantially the same as the allegations contained in the bill of complaint filed by said American Oak Leather Company in this court, and that in and by the order of said Circuit Court of Cook County allowing said American Oak Leather to file its said intervening petition, it was ordered that the receivership in said cause of the Lambeau Leather Company vs. C. H. Fargo & Co. et al. in the Circuit Court of Cook County, Illinois, should be and was extended over and to cover the claim of said American Oak Leather Company and the matters and things set forth in its said intervening petition.

5. That the United States Rubber Company and L. Candee & Company, two of the defendants in this cause, on August 28th, 1896, filed their answers in said cause of the Lambeau Leather Company vs. C. H. Fargo & Co. et al., in the Circuit Court of Cook County, and that the Metropolitan National Bank and some of the other defendants filed demurrers to said bill of complaint, and that others of said defendants filed answers thereto.

Evidence taken before Master.

COMPLAINANT'S EXHIBITS.

COMPLAINANT'S EXHIBIT 1.

(*Offered at p. 8.*)

Said exhibit consists of:

Record of Judgt. of Met. Nat. Bk. against C. H. Fargo & Co., entered, Aug. 6\96.

(a) Promissory note for $25,000, dated August 5, 1896, payable to the order of Metropolitan National Bank, of Chicago, on demand after date, with interest at the rate of 6 per cent. per annum, signed "C. H. Fargo & Co., by Chas. E. Fargo, prest.," said note having attached thereto as a part thereof a warrant of attorney in ordinary form, bearing same date and signed in the same manner, authorizing confession of judgment at any time in favor of said bank for the amount due on said note, and for the additional sum of $250 as attorneys' fee.

(b) Attached to said note is a document containing narr., affidavit and cognovit, all in due form and sufficient in law to authorize the Circuit Court of Cook County to enter judgment by confession on said note in favor of Metropolitan National Bank of Chicago and against C. H. Fargo & Co., for $25,000, and in addition thereto for $250 as attorneys' fees. Endorsed on back of said document is the following: "Enter judgment for $25,250 and costs. O. H. Horton, judge." Said document was filed with the clerk of said court on August 6, 1896, in cause number 160,223.

(c) Judgment by confession for $25,250 and costs, entered August 6, 1896, in favor of the Metropolitan National Bank of Chicago against C. H. Fargo & Co. in the Circuit Court of Cook County, in said cause No. 160,223.

(d) Execution upon said judgment, in due form, issued out of the office of the clerk of said Circuit Court of Cook County, on August 6, 1896, directed to the sheriff of Cook County, commanding him to make $25,250 and $13 costs. Said execution was delivered to sheriff at 5:04 o'clock p. m., on August 6th, 1896. The sheriff's return on the back of said execution states that on August 6, 1896, he levied on all the right, title and interest of defendant in the entire stock of boots and shoes, store fixtures, etc., belonging to defendant at 196 to 200 Market street, Chicago, Illinois, which property was theretofore levied upon by the United States marshal under two executions sued out of the United States Circuit Court in favor of L. Candee & Company and U. S. Rubber Company respectively, and against C. H. Fargo & Co. Said return also states that the property levied upon was taken from the sheriff "by being forcibly ejected by the United States marshal this 8th day of August, 1896."

(e) Execution issued on said judgment in due form, directed

the sheriff of Lee County, Illinois, and delivered to said sheriff August 6, 1896, at 9:40 p. m. On the back of said execution an endorsement by said sheriff, dated August 6, 1896, stating at he had that day levied on all property contained in the rgo & Co. factory buildings in Dixon, Illinois, subject to a pre- us levy made by John W. Arnold, United States marshal. On back of said execution was also a return by said sheriff, dated tober 4, 1896, stating that the property levied upon was sold by ited States marshal; that there was no other property of de- dant in said county; and that therefore he, the said sheriff, turned the execution wholly unsatisfied.

Complainant's Exhibit 1.

COMPLAINANT'S EXHIBIT 2.

(*Offered at p. 8.*)

Said exhibit consists of:

Record of Judgt. entered Aug. 6/96 of U. S. Rubber Co. against C. H. Fargo & Co. for $145,400; and proceedings thereon.

(a) Promissory note for $140,000, dated January 6, 1896, pay- le to the order of United State Rubber Company on demand, th interest at the rate of six per cent. per annum after date, d signed C. H. Fargo & Co., by Chas. E. Fargo, President, said te having attached thereto as a part thereof a warrant of at- ney in ordinary form, bearing same date and signed in the me manner, and also attested by F. M. Fargo, treasurer, and A. Fargo, secretary, under the seal of C. H. Fargo & Co., au- rizing confession of judgment at any time in favor of United ates Rubber Company for the amount due on said note, and the additional sum of $500 for attorneys' fees.

(b) Attached to said note is a document containing narr, davit and cognovit, all in due form of law and sufficient in to authorize the Circuit Court of the United States for the rthern District of Illinois to enter judgment on said note by nfession against said C. H. Fargo & Co., and in favor of said ited States Rubber Company, for the sum of $144,900, and in dition thereto the sum of $500 as attorneys' fees. Said note, rr. affidavit and cognovit, comprising one document, were filed said court on August 6, 1896, in cause No. 24,216. The follow- endorsement appears on the back of said document: "Judgt. t. open court. W. H. Seaman, Judge."

(c) Judgment on said note in due form of law for $145,400 and sts, entered on August 6, 1896, in the United States Circuit rt for the Northern Distrlct of Illinois against C. H. Fargo Co., and in favor of United States Rubber Company in cause . 24,216.

(d) Execution upon said judgment in due form issued out of

Complainant's Exhibit 2.

the office of the clerk of said court on August 6, 1896, direc
to the marshal of the Northern District of Illinois, and deliver
to said marshal at 4:45 o'clock p. m. on the same day, co
manding him to cause to be made the sum of $145,408.06 out
the goods, chattels, lands and tenements of the defendant. T
following return of John W. Arnold, United States marshal,
attached to said execution:

"I, John W. Arnold, United States marshal in and for sa
district, do hereby certify that by virtue of the annexed writ
execution to me directed, issued from the Circuit Court of t
United States for the Northern District of Illinois, on August
1896, in favor of United States Rubber Company, plaintiff, a
against C. H. Fargo & Co., a corporation, defendant, and al
another certain writ of execution to me directed issued from sa
court on the same day, in favor of L. Candee & Company, a c
poration, plaintiff, against C. H. Fargo & Co., a corporation, d
fendant, which said last mentioned writ was delivered to m
simultaneously with the said writ hereto annexed on the
day of August, 1896, at 4:45 o'clock p. m., of said day, I did,
August 6, 1896, at 5:10 o'clock p. m. of said day, levy upon a
the right, title and interest of said defendant C. H. Fargo & C
a corporation, in and to the entire stock of merchandise, c
sisting of boots, shoes, footwear, leather and rubber goo
and material for the same, and all other personal property, c
sisting chiefly of tools, fixtures, furniture, stationery, etc., si
ated in the building on the south-west corner of Market a
Quincy streets in the City of Chicago, within said district, th
occupied by said C. H. Fargo & Co. as a wholesale boot and sh
establishment, said building being also known as Nos. 126 to
Market street in said city.

I do further certify that by virtue of said two executions I d
also on the 6th day of August, 1896, at 9:30 o'clock p. m. of sa
day, levy upon all the right, title and interest of said defend
C. H. Fargo & Co. in and to the entire stock of boots and sho
and material used for making the same, merchandise, leath
goods manufactured and in process of manufacture, machine
tools, furniture, fixtures and all other personal property c
tained in the two-story and basement brick and frame buildi
used as a boot and shoe factory by said C. H. Fargo & Co., sit
ated in the City of Dixon, Lee County, Illinois, within my di
trict, and in the two buildings adjacent to said factory, kno
as the oil house and warehouse respectively.

I do further certify that by virtue of said two writs of exec
tion and said first mentioned levy, I did on the 22d day of A

Complainant's Exhibit 2.

st, 1896, at 10 o'clock a. m., in the forenoon of said day, at the nt door of said building on the south-west corner of Quincy l Market streets in Chicago, within my district, wherein said ds and property first levied upon as aforesaid were situated e time and place of sale having been first duly advertised ac- ding to law), sell at public vendue to the highest and best der at said sale, namely, to the corporation known as 'The ir,' the property so first levied upon as aforesaid, for the sum sixty-five thousand dollars ($65,000); that in making said sale irst divided the property into nine (9) lots (making said allot- nts with due reference to kind and character of the property d with a view of obtaining the best prices therefor), and then ered each of said lots separately to the highest and best bid- r for cash, reserving the acceptance of any and all bids for said s until all of said lots had been thus offered, and until the perty should be first offered as a whole; that the aggregate of highest bids of said property so offered in said lots was ty-nine thousand six hundred and nine dollars ($59,609); that erwards I duly offered all of the property so first levied upon aforesaid as a whole, and as the amount bid therefor, to wit, sum of sixty-five thousand dollars ($65,000), exceeded the gregate of the highest bids on said lots, I duly sold the same aforesaid, for that sum.

I do further certify that by virtue of said two executions and e levy second above made as aforesaid on the property in said tory building at Dixon, Illinois, I did on the 25th day of gust, 1896, at 2 o'clock p. m. of said day, at the main entrance r of said factory building, at said City of Dixon, County of e, and State of Illinois, in my district (the time and place of le having been duly advertised according to law), sell at blic vendue to the highest and best bidder at said sale, mely, to the United States Rubber Company, plaintiff in the ecution hereto annexed, the property in said factory building last levied upon as aforesaid, for the sum of fifteen thousand e hundred dollars ($15,500); that in making said last men- ned sale, I first divided the property into small lots, with a w of obtaining the best prices therefor, and offered each lot parately; that there being no bidders for said separate lots, I en offered said property as a whole, and sold the same as afore- d to the United States Rubber Company, it being the highest d best bidder. Said sum of fifteen thousand five hundred llars ($15,500) was not paid to me by said United States Rub- r Company, and I have never received the same or any part reof. At the time of said sale I was instructed by the solic-

Complainant's Exhibit 2

itors of said company that they would ask to have said su credited upon the said execution in favor of the United Sta Rubber Company in part satisfaction thereof.

I do further certify that afterwards, to wit, on or about the 1 day of September, 1896, I was served with a chancery subpo issued out of said court in suit No. 24,238, wherein the Americ Oak Leather Company is complainant and said C. H. Farg Co., United States Rubber Company, L. Candee & Compa Metropolitan National Bank of Chicago and myself are d fendants, wherein the bill of complaint prayed for an injunc restraining me from paying over to the judgment creditors in s two executions the moneys realized by me from said levies a sales and for a receiver of C. H. Fargo & Co.; that I thereup by direction of counsel held said moneys so realized until motion for a preliminary injunction and receiver in said ca could be heard and determined by said court; that afterwar to wit, on January 18, 1897, an order was entered by s court in said cause enjoining me from paying over said mone to the judgment creditors in said executions and directing m to pay over the same to Henry W. Bishop, who was the appointed by said court as receiver of C. H. Fargo & Co. (a cer fied copy of which order is hereto attached and made a pa hereof); and that afterwards, to wit, on the 18th day of Marc 1897, after said receiver had duly qualified by filing his bond provided by said order, I did, in compliance therewith, pay o to said Henry W. Bishop, as such receiver, the sum of fifty eig thousand nine hundred and fifteen dollars and eighty-five cen ($58,915.85), which constituted all the moneys which came my hands as proceeds of said levies and sales after first deduc ing my fees and all other costs and disbursements made by m in connection therewith as hereinafter stated. The said or of said court in said last mentioned cause further comman said United States Rubber Company, plaintiff in the execut hereto annexed, to turn over and deliver to said receiver all the property purchased by it from me for the sum of fifte thousand five hundred dollars ($15,500) at the said sale at Dix Illinois, as aforesaid, which order, I am advised, had the effect temporarily setting aside said sale; and therefore under su advice and by direction of said United States Rubber Compan I have not credited the said purchase price upon the executi hereto annexed.

In consideration whereof I hereto return the said annexed execution in no part satisfied this 27th day of March, 1897. Complainant's Exhibit 2.

(Signed) JOHN W. ARNOLD,
United States Marshal in and for the Northern District of Illinois.

By GEORGE Q. ALLEN,
Office Deputy."

Attached to said execution and return is the marshal's account of receipts and expenditures by him in connection with said two sales. Said account shows moneys received, $65,000; expenses of levies and sales (including disbursements for statutory labor claims, rent, insurance, etc.), $6,084.15, and balance turned over to Henry W. Bishop, receiver, $58,915.85. Attached to said execution is also a copy of order of United States Circuit Court entered January 18, 1897, in cause No. 24,238, now on hearing before the master, appointing receiver, etc. Said execution so returned was filed in the office of the clerk of said court on March 31, 1897.

COMPLAINANT'S EXHIBIT 3.

(Offered at p. 9.)

Said exhibit consists of:

Record of Judgt. entered Aug. 6, 1896, of L. Candee & Co. against C. H. Fargo & Co. for $38,300, and proceedings thereon.

(a) Promissory note for $51,500, dated January 6, 1896, payable to the order of L. Candee & Company on demand, with interest at the rate of six per cent. per annum after date, and signed C. H. Fargo & Co., by Chas. E. Fargo, President—said note having attached thereto as a part thereof a warrant of attorney in ordinary form, bearing the same date and signed in the same manner, and also attested by F. M. Fargo, treasurer, and E. A. Fargo, secretary, under the corporate seal of C. H. Fargo & Co., authorizing confession of judgment at any time in favor of said L. Candee & Company for the amount due on said note and for the additional sum of $300 as attorneys' fees.

(b) Attached to said note is a document containing narr, affidavit and cognovit, all in due form and sufficient in law to authorize the Circuit Court of the United States for the Northern District of Illinois to enter judgment on said note by confession against said C. H. Fargo & Co., and in favor of said L. Candee & Company, for the sum of $38,000, and in addition thereto the sum of $300 as attorneys' fees. Said document, together with said note, was filed with the clerk of said court on August 6, 1896, in cause No. 24,215. The following endorsement appears on the back of said document: "Judgt. ent. open court. W. H. Seaman, Judge."

(c) Judgment on said note by confession, in due form of law,

Complainant's Exhibit 3.

for $38,300 and costs, entered on August 6, 1896, in the United States Circuit Court for the Northern District of Illinois, against C. H. Fargo & Co., and in favor of said L. Candee & Company, in said cause No. 24,215.

(d) Execution upon said judgment in due form issued out of the office of the clerk of said court August 6, 1896, directed to the marshal of the Northern district of Illinois, and delivered to said marshal at 4:45 o'clock p. m. in the same day, commanding him to cause to be made the sum of $38,308.60 out of the goods, chattels, lands and tenements of the defendant.

Attached to said execution is a return and an account of expenses made by John W. Arnold, United States marshal, dated March 27, 1897, which return and account are in all respects the same as the return and account attached to the execution in favor of United States Rubber Company, as set forth in Complainant's Exhibit 2. Attached to said execution is also a certified copy of the order of the United States Circuit Court entered January 19, 1897, in cause No. 24,238, now on hearing before the master, appointing a receiver, etc. Said execution, so returned, was filed in the office of the clerk of said court on March 31, 1897.

COMPLAINANT'S EXHIBITS 4 AND 5.

(*Offered at p. 11.*)

Deeds of C. H. Fargo & Co. to Met. Nat. Bk., dated Aug. 6/96, conveying factory property at Dixon.

These exhibits are two warranty deeds from C. H. Fargo & Co. to the Metropolitan National Bank of Chicago, dated August 6, 1896, duly acknowledged on the same date, and duly recorded in the recorder's office of Lee County at 11:45 p. m. on same date, each for the stated consideration of $12,500, and each conveying a portion of the real estate whereon is situated C. H. Fargo & Co.'s factory buildings at Dixon, Illinois. These two deeds, taken together, conveyed the real estate and buildings constituting the entire factory property of C. H. Fargo & Co. as described in the bill of complaint in this cause. Both deeds are signed as follows: "C. H. Fargo & Co. (Seal.) By Chas. E. Fargo, Prest. (Seal.) By F. M. Fargo, V. P. (Seal.)"

COMPLAINANT'S EXHIBIT 6.

(*Offered at p. 119.*)

Judgt. note for $25,000, Fargo & Co to Met. Nat. Bk., dated Aug. 5/96, and canceled in exchange for deeds to factory property.

This exhibit consists of a promissory note for $25,000, dated August 5, 1896, payable on demand, to the order of the Metropolitan National Bank of Chicago, with interest at six per cent. per annum, signed C. H. Fargo & Co., by Chas. E. Fargo, president; said note having attached thereto a warrant of attorney

the ordinary form, bearing same date, and signed in like man- Complainant's Exhibit 6
, authorizing Henry R. Platt, or any attorney of record, to
fess judgment on said note. The signatures to the note and
the warrant of attorney are canceled by lines drawn in ink
ss said signatures.

COMPLAINANT'S EXHIBIT 7.

(Offered at p. 150.)

his exhibit consists of: Record of judgt. of Pfister & Vogel Leather Co against C. H. Fargo & Co. and proceedings thereon.

) Judgment for $15,360 and $12.65 costs in favor of Pfister &
el Leather Co. vs. C. H. Fargo & Co., rendered in the Circuit
rt of Cook County, Illinois, on December 18, 1896, in cause
160,262.

) Execution, duly issued out of said court on said judgment
March 4, 1897, directed to sheriff of Cook County, which exe-
on was, on June 2, 1897, duly returned by said sheriff "no
perty found."

) Execution, duly issued out of said court on said judgment
April 3, 1897, directed to sheriff of Lee County, Illinois,
ch said execution was, on April 12, 1897, duly returned by
sheriff wholly unsatisfied.

COMPLAINANT'S EXHIBIT 8.

(Offered at p. 187.)

his exhibit consists of a judgment in due form in favor of Record of judgt. of Wilder & Co. against C. H. Fargo & Co., Sept. 15/96.
mas E. Wilder and John E. Wilder and against C. H. Fargo
o. for the sum of $4,584.95 and costs amounting to $11, ren-
d in the Superior Court of Cook County on September 15,
, in cause No. 176,756.

COMPLAINANT'S EXHIBIT 9.

(Offered at p. 201.)

is exhibit consists of: Record of judgt. of Am. Oak Leather Co. against C. H. Fargo & Co. and proceedings thereon.

) Judgment in due form in favor of American Oak Leather
pany against C. H. Fargo & Co. for $12,829.56 and costs
unting to $11, rendered in the Superior Court of Cook County
eptember 10, 1896, in case No. 176,895.

) Execution in due form upon said judgment, issued out of
court in said cause on September 10, 1896, directed to the
iff of Cook County, Illinois, and delivered to him on same day.
orsed on the back of said execution is the following return:
ave demanded of the within named defendant C. H. Fargo &

Complainant's Exhibit 9.

Co., by its president, C. E. Fargo, money or property to satisfy this writ, and it having failed to satisfy the same or any part thereof, and not being able to find any property in my county on which to levy, I therefore return the same, no property found and no part satisfied, this 11th day of September, 1896. (Signed) James Pease, sheriff, by J. M. McCartney, deputy." The following endorsement or file-mark of the clerk of said court also appears upon the back of said execution: "Filed September 14, 1896. S. D. Griffin, clerk."

COMPLAINANT'S EXHIBIT 10.

(*Offered at p. 201.*)

Letterhead paper used by C. H. Fargo & Co. after Jan. 6/96, and list of letters written thereon.

Said exhibit consists of:

(a) Letter-head, as follows:

Chas. E. Fargo, Prest. Frank M. Fargo, V. P. & Treas. Edwd. A. Fargo, Secty.

C. H. FARGO & CO.,
Manufacturers of Boots and Shoes,
196, 198, 200 Market street, Chicago.

(b) List of letters written by C. H. Fargo & Co. or by its officers or agents in 1896 on letter paper bearing said letter-head. Said list shows letters as follows:

5 to American Oak Leather Company, Chicago, dated respectively March 3, 6 and 26, June 2 and 6, 1896.

17 to Tubular Rivet and Stud Company, Boston, dated respectively February 1, 13, 15 and 19, March 4, 10, 12, 21, 25 and 26, April 3, 9 and 27, May 13, 18 and 29, June 5, 1896.

33 to M. L. Hiller & Sons, New York, dated respectively January 7, 13, 14, 14, 17, 17, 21, 21, 23 and 29, February 3, 7, 10, 12, 15, 18, 20, 25 and 28, March 2, 2, 9, 11, 14, 17, 18, 18, 21 and 23, April 3, 4, 6 and 9, 1896.

3 to Farnsworth, Hoyt & Co., Boston, dated respectively January 11 and 24, February 8, 1896.

3 to W. W. Spaulding, Haverhill, Massachusetts, dated respectively January 23, February 6 and 12, 1896.

1 to B. E. Cole & Co., Boston, dated February 1, 1896.

3 to Boston Blacking Company, Boston, dated respectively January 13, February 17, May 16, 1896.

1 to Dixon National Bank, Dixon Illinois, dated April 7, 1896.

3 to City National Bank, Dixon, Illinois, dated respectively February 15 and 18, June 15, 1896.

2 to Colburn, Fuller & Co., Boston, dated respectively January 10, February 1, 1896.

1 to Shattuck & Binger, New York, dated July 18, 1896. Complainant's Exhibit 10.
3 to E. H. Van Ingen & Co., Chicago, dated respectively March and 4, April 3, 1896.
7 to Easton Boot and Shoe Company, Easton, Pennsylvania, ated respectively January 17, 25, 27 and 30, February 5, 18 and 1896.
1 to C. D. P. Hamilton, Boston, dated March 4, 1896.
1 to Frank A. Rice, Easton, Pennsylvania, dated April 2, 1896.
1 to R. J. Gunning Company, Chicago, dated May 19, 1896.
4 to Sterling Elliott, Boston, dated respectively February 21 nd 28, April 25 and 30, 1896.
1 to Estabrook-Anderson Shoe Company, dated April 6, 1896.
1 to Moody, Estabrook & Anderson, dated January 22, 1896.
7 to A. W. Shaw & Co., Freeport, Maine, dated respectively anuary 15, 22 and 25, February 8, 10 and 14, April 16, 1896.
3 to Lacing Stud Company, Boston, dated respectively Febru- y 29, March 11 and 24, 1896.
31 to Geo. H. Van Pelt, Chicago, dated respectively January 6, 7, 25 and 25, February 6, 7, 11, 12, 13, 15, 16, 18, 18, 18, 20, 24, 27, 8 and 29, March 7 and 17, April 9, 20 and 29, May 13, 13, 16, 18 nd 28, June 10 and 11, 1896.
2 to C. H. Fargo & Co., Chicago, dated respectively March 17, pril 15, 1896.

COMPLAINANT'S EXHIBIT 11.

(*Offered at p. 187.*)

"This agreement, made and entered into this sixth (6th) day August, 1896, between the Metropolitan National Bank of Chi go, party of the first part, the United States Rubber Company, corporation, party of the second part, and the L. Candee Com any, a corporation, party of the third part, witnesseth: Agreement of Aug. 6/96, between Rubber Companies and Met. Nat. Bk. as to sharing pro-rata in Fargo & Co. assets.

Whereas, the said parties aforesaid are all large creditors of . H. Fargo & Co., a corporation, and have determined to unite eir efforts to collect their respective claims against said com- any and share pro rata in the results thereof; and,

Whereas, the said party of the first part is about to take cer- in lands and buildings of the said C. H. Fargo & Co., at Dixon, linois, in part satisfaction of its indebtedness against said com- any, and said parties of the second and third part are about to ke an assignment of the accounts and bills receivable belong g to the said C. H. Fargo & Co., as collateral security for the debtedness due and owing by the said C. H. Fargo & Co. and l three of said parties are about to enter up judgments upon

Complainant's Exhibit 11.

their claims against the said C. H. Fargo & Co., and to levy up the property thereof for the purpose of satisfying the indebte ness owing them, respectively, from said C. H. Fargo & Co.

Now, therefore, it is hereby agreed, that each of the parti hereto shall receive from what may be realized from the asse of said C. H. Fargo & Co., upon said indebtedness aforesai such a percentage of the total amount which all of said parti shall receive therefrom, as the amount of its claim shall bear the amount of the claims of all of the parties hereto, and n more; and to that end, each of the parties hereto agrees that will faithfully account with the others from time to time, and a often as once in two months, showing all net sums that it ha received on account of its claim. And it further agrees, that upon such accounting it shall appear that it has received larger percentage thereof than either of the others, it will the and there forthwith account to each of the others for such a amount as will equalize the percentage of each of the othe with the percentage each shall retain.

It is further understood and agreed that all the property her inbefore referred to, including said real estate, shall be subje to the care, custody, control, management, manipulation an sale by the firm of Isham, Lincoln & Beale, who will act a trustees in the premises for all parties concerned, and whos actions and judgment in and about the same shall be sole, fin and conclusive.

In witness whereof, the parties hereto have hereunto caus these presents to be signed in the name of the respective co porations, by their respective attorneys duly authorized so to d and their respective corporate seals to be hereunto attached, th day and the year first above written.

The Metropolitan National Bank of Chicago.
By Hoyne, Follansbee & O'Connor,
Its Attorneys

United States Rubber Company,
By Isham, Lincoln & Beale,
Its Attys

L. Candee & Company,
By Isham, Lincoln & Beale,
Its Attys.

DEFENDANTS' EVIDENCE.

Testimony of E. G. Keith.

ELBRIDGE G. KEITH, called as a witness on behalf of the Metropolitan National Bank, having been first duly sworn, was examined in chief by Mr. Follansbee, and testified as follows:

Q. Will you please state your name?
A. Elbridge G. Keith.
Q. Mr. Keith, what, if any, relation do you sustain to the Metropolitan National Bank?
A. I am president of that bank.
Q. Did that bank have any business with the corporation known as C. H. Fargo & Co. prior to the 6th day of August, 1896?
A. Yes, sir.
Q. What was the business of that company?
A. Boots and shoes.
Q. How long had they been doing business with the Metropolitan National Bank?
A. Well, I should say ten or twelve years.
Q. Had they kept their deposit account there?
A. Yes.
Q. Had they from time to time borrowed money for the purpose of carrying on their business?
A. They had; during most of the time they had borrowed.
Q. State whether or not at any time they furnished statements to your bank showing the condition of their assets and liabilities?
A. They did, frequently—I would not want to say frequently, but once a year or more.
Q. Without asking you in detail, what did those statements show generally as to their condition?
A. They showed assets over liabilities, varying from, my general recollection is, from $350,000 to $450,000.
Q. What effect, if any, did these statements produce upon you or your bank in the matter of extending them a line of credit?

Testimony of E. G. Keith.

A. We always considered their statements reliable and gave them credit without question.

Q. Do you remember whether or not you established any fixed sum as their line of credit in your bank?

A. Yes; we fixed a sum; I think it was $50,000. But, if occasionally they wanted $10,000 more for a short period we took that into consideration.

Q. Did you at any one time loan them more than $50,000—at any one time?

A. During the period of ten years that they were with us?

Q. Yes.

A. During the period of ten years that they were with us we had loaned them sometimes more than double that, but that was previous to 1893—the panic of 1893.

Q. In what way for the most part had they met those loans?

A. They usually met them about as we asked for them; there was a time in 1893, during the panic, that they asked for an extension; I think that extension ran into six or nine months; I do not recall at any other time they ever refused to comply with our wishes with regard to taking up paper when we wanted them to.

Q. Do you remember about how much they were owing you along say about the first of August, 1896?

A. My recollection is, $40,000—August, 1896, you say?

Q. Yes. What was the condition of the money market at or about that time here in Chicago?

A. There was a great deal of want of confidence among business men as regards the effect of the presidential campaign after the convention which nominated Bryan, everybody was thrown into a panic over the outcome of the campaign.

Q. In consequence of that, what, if anything, did you do or say to the C. H. Fargo & Co. with reference to their loans with your bank?

A. I think towards the last of July we wrote them a letter telling them that we should expect the notes which were maturing to be paid without renewal prior to November, or October or November of that year.

Q. 1896?

A. 1896, yes.

Q. After writing that letter, or giving that notification, did you see Mr. Fargo, the president of the company?

A. Then I should say inside of a week he came in one after

Testimony of E. G. Keith.

noon, apparently disturbed somewhat, and said he should not be able to comply with our wishes regarding those notes, that collections were very bad and sales were bad, and he was very much discouraged, and I think that he said, "I have got to have $10,000 more." I said, "Why do you have to have $10,000? You say your business is bad; you ought to be able to get along without more money if you are not buying more goods?" He finally said that he had to have it to pay some notes on which he had borrowed and had given Metropolitan National Bank stock as collateral, and put the money into the firm's business, and that those notes would have to be paid or he would lose his stock. He said that was an individual matter and he thought he ought to have the money to take care of those notes.

Q. Whose notes were they that the money had been borrowed on? Do you know whether they were his own notes or his brother's?

A. I think they were both; he had given individual notes and had given Metropolitan National Bank stock as collateral to secure the banks.

Q. What, if anything, did he say with reference to the proceeds received from the negotiation or sale of the notes—of the money borrowed on those notes?

A. He said he had to take care of these notes, and had to have this money to do it.

Q. What had he done with the money realized from the notes?

A. He had put it into the firm's business; the firm had had the benefit of the proceeds of those notes.

Q. What did he say to you at that time about the condition of the firm, if anything?

A. I said I cannot loan you any more money; I don't know as we will get back what you have got, and he said: "Now, Mr. Keith," he said, "there is ample for everybody, and more, to pay two or three times over," and then he went on to enumerate what was in accounts and what was in stock, and so on; and I was under the impression that he had made a great success of this ball bearing bicycle shoe. He had been advertising the thing and he did once tell me that they had been a great success. I had no idea but what the concern was in a prosperous condition, and when he said that, I supposed, of course, he had become discouraged, as everybody else had at that time over the business.

Q. Did he at any time tell you or say anything to the effect,

Testimony of E. B. Keith.

or in any way intimate, that the firm might not be able to pull through?

A. I think toward the close of his conversation he expressed some doubt whether he should be able to pull through, but he led me to infer that at the worst it would be some such an affair as a repetition of the thing which occurred in the panic of 1893, when he got a long extension and paid up.

Q. Did he at that time make you any statement in writing in reference to the condition of his assets and liabilities?

A. No; he only gave me a verbal statement at that time. I might say that as regards a statement that I do not know as it is material to the case, but he had not made us a statement for I should say about eighteen months, and had claimed that he was so busy with this ball-bearing shoe that he could not stop to take stock, that his orders were very large, and that he had been unable to take stock, and finally I wrote him in May that we must have a statement, and he said that on, I think it was August 1st, or about that time, he would take stock, after the bicycle season was over.

Q. On whose behalf did he ask to borrow this additional $10,000?

A. On behalf of the firm—the corporation.

Q. And in what manner was he going to evidence—did he promise to evidence this indebtedness—additional indebtedness?

A. He said—I asked him if he would give a judgment note, that was what he had done in 1893 when we made our arrangement with him at that time, we took judgment notes of him, and I asked him to do the same thing again, and he said he would

Q. I notice that he said in his testimony that he had never at any time before this occasion given you judgment notes; is that true?

A. It is not true; he gave us judgment notes for over $100,000 in 1893.

Q. What, if anything, was said with reference to obtaining authority from the company authorizing the issuance of judgment notes?

A. I told him that that would have to be carefully looked after and that I should refer that to you as our attorney and that you would see that proper steps were taken

Q. What, if any, reply did he make to that?

A. He said that was satisfactory—that he would be willing to do it.

Q. Did you know at the time he made this application for his additional loan of $10,000 t at the company then had outstanding any judgment notes?

A. No, sir; I was not aware of it; I think during this conversation, or perhaps a conversation which was held in Mr. Beale's office afterwards, I ascertained that, but I was not aware of it at the time; I do not think that I was aware of it that day until later in the day.

Q. Can you state about when this conversation which you have been detailing took place?

A. I should say it was in the afternoon about 2 o'clock.

Q. Of what day of the month?

A. It was on Monday, that was the day of the week—I cannot give you the date—I think it was on Monday.

Q. On the Monday prior to the time when the $10,000 loan was actually made?

A. Yes. The reason I know is because on Wednesday following I went to Charlevoix and this matter had not been entirely straightened up when I left.

Q. Mr. Keith, do you know how that last loan of $10,000—how it was evidenced by the company in the first instance to your bank?

A. Why, it was included—I think when we took the judgment notes we included the $40,000 that he already owed us and took two notes of $25,000 each.

Mr. Follansbee: That is not as it was; he first gave the note of the company for $10,000, and that note was taken up with four notes of $10,000 each, and two notes of $25,000 each with warrant of attorney given in place of them.

The Witness: I think that day he executed a ten thousand dollar note, on Monday, and that $10,000 went to the credit of the company on the books of the bank.

Q. When you learned that the rubber companies had judgment notes, what steps, if any, did you take at or about that time to secure judgment notes for your bank in place of your other notes?

A. I think I went with you to the attorney o' the rubber companies, Mr. Porter, and ascertained from him that the concern had to close business—that these judgment notes were about to be entered up and that we should share alike with them in so doing.

Q. And did you thereafter obtain judgment notes in place of those plain notes of hand?

Testimony of E. G. Keith.

A. Yes, sir.

Q. Do you remember how many there were of those judgment notes?

A. I do not I left that pretty much to Mr. Jones and yourself.

Q. Did you at or about that time receive any proposition from the Fargo Company for the purchase of its manufacturing plant at Dixon, Illinois?

A. My impression is that I was away at the time that proposition was made. I do not recall it.

Q. Do you know as a matter of fact whether or not it was conveyed to your bank and that in exchange for that you surrendered one of those $25,000 notes?

A. That is my information that that was so done.

Q. Now, during the time that the negotiations took place between your bank and Mr. C. E. Fargo, as president of the Fargo Company, what, if any, assurances did he make aside from those that he had made to you in the conversation you have already repeated as to the condition of their assets and liabilities?

A. I have this very plain recollection of one single question that I asked him, that was, what was the outcome going to be? And his answer was this, "Mr. Keith, there is ample for everybody, and a great deal more," "Two or three times over," I think he said, "to pay every claim that is against the firm."

Q. Did he reit rate that statement or one similar to it on more than one occasion?

A. I think he did during the day, two or three times.

Q. When was it that you first learned that the rubber companies contemplated taking any active measures against the Fargo Company?

A. It was, I should say, 5 or 6 o'clock of the same day, that I was going to see him the same afternoon it was—I know that same day, on Monday afternoon, Monday evening.

Q. You have said something about sharing equally with the rubber compaines; did the talk about that take the form of an agreement between the bank and the rubber companies?

A. Yes; I think it did.

Q. That is, the agreement that has been offered in evidence in this case reciting that the two rubber companies would unite in their efforts to collect their respective claims and share pro rata in the proceeds?

A. Yes, sir. I did not really feel that it was a matter of deep consequence because I supposed the assets would be more than

sufficient for any of our needs and according to his assurances would satisfy everybody. Testimony of E. G. Keith.

Q. Did you have any agreement with these rubber companies other than this one that has been produced in writing, and been offered in evidence in this case?

A. I do not think so.

Q. I notice in Mr. Fargo's testimony in this case he was asked this question, "Did you tell him what you wanted the $30,000 for." To which he answered, "I think I did." "Question. What did you say to him? Answer, I said we wanted $30,000 for our own use, to live on; the concern owed it to us." Did you have that conversation with Mr. Fargo?

A. He never told me that. I asked him what he wanted the money for when he first asked me; he said he wanted it to pay money he had advanced by borrowing on Metropolitan National Bank stock, and he wanted to redeem those notes with that money.

Q. What, if anything, did he say to you about the company owing you that money?

A. He said he borrowed that money on the collateral for the purpose of putting it into the firm's business, and he thought that he was entitled to it.

Q. That he was entitled to have the firm pay it back to him?

A. Yes; pay it back.

Q. He was also asked, "Whom did you include by the pronoun 'our own use'?" He answered, "My brothers and myself." Did he tell you that he wanted this money for himself and his brothers to live on and for their own use?

A. No, sir; I am quite sure he would not have got it if he had.

Q. He was also asked this question, "When you got this $30,000 from Mr. Keith or the Metropolitan National Bank you had made up your mind you would have to go to the wall? Answer, Yes sir. Question, And Mr. Keith knew it? Answer, Yes, sir. Question, And you told him so? Answer, Unquestionably I told him so." Did he tell you that, Mr. Keith?

A. No. His manner showed that he was greatly discouraged and it led me to conclude that he might have to go; I do not think he said so. I am pretty certain about that, but he was apparently in that condition where he was very much as he was in 1893, when we made an extension, a settlemant, with him; I thought he had lost his grip, but I did not think he was going to precipitate a failure at that time.

Evidence taken before Master.

Testimony of E. G. Keith.

Q. But, outside of those statements, he had assured you their assets were very largely in excess of their liabilities, had he not?

A. All the time; he assured me that they could pay and come out and have a lot of money left.

Q. Did you know at the time that you made this additional loan, or at the time you made either of the other loans aggregating $40,000, that the Fargo Company was officered by parties representing the rubber companies?

A. No, sir.

Q. When did you first learn that any parties were acting in behalf of the company other than those who were actually connected with its management in the sale of its goods?

A. It might have been the day following, I think it was from something which was said in Mr. Beale's office by Mr. Porter. My impression is that he said that the directors of the company were men who were employes in the office there, or were part of the firm—of the law firm there.

Q. Did you have any connection with the rubber companies other than this written agreement to unite in your respective efforts to collect your respective claims?

A. No, sir.

Cross-Examination by Mr. Smith.

Q. About what time in the day on Monday was it, Mr. Keith, that Mr. Fargo first applied to you for this additional loan of $10,000?

A. My recollection is it was early in the afternoon, on Monday, the 3d day of August, 1896.

Q. When did you first learn of the situation of the Fargo Company with reference to the rubber companies?

A Well, I think that that was perhaps 3 or 4 o'clock in the afternoon.

Q. Of the same day?

A. I was called upstairs, I think, by Mr. Porter, or he came to see me and stated that.

Q. At that time had the loan of $10,000—what had been done with the proposed loan of $10,000?

A. We had agreed to give it to him; nothing else had been done.

Testimony of E. G. Keith.

Q. Nothing else had been done?
A. Nothing else but that.
Q. Wh had not the loan been consummated?
A. Because the directors had to have a meeting to make the dgment notes—put it on the record.
Q. The original agreement between you was that a judgment te was to be given by the Fargos for that $10,000?
A. We told him that we wanted judgment notes for that and r all the rest of our indebtedness.
Q. Was a judgment note for $10,000, representing this par- ular $10,000, received by the bank before the two notes of ,000 were given?
A. I think so—I am not sure they were.
Q. You think there was?
A. Yes. I know the amount went to their credit; I am rather lined to think the amount went to their credit the next morn- g, Tuesday, August 4, 1896. They checked it out, but I could t tell whether it was checked out that day or not.
Q. When was the judgment note given which secured this ,000?
A. I think it was given the evening of that day—I know the rectors were over that evening, and I left all the details of the atter in Mr. Follansbee's hands and went home earlier than e did. I think proceedings were held by which it was given at evening.
Mr. Follansbee: I know you do not want to get anything into e record that is not correct; I think that first $10,000 was a mple note, and that after that the four $10,000 notes were sur- ndered and—
The Witness: I cannot tell—I do not pretend to recollect that.
Mr Follansbee: The $10,000 note was given earlier and then o notes of $25,000 each were given.
The Witness: S far as this question is concerned, the notes d not pass through my hands and I would not know.
Q. Then you did not see yourself any $10,000 note given by the rgos to you for this $10,000?
A No, sir.
Q. Never saw any such note?
A. No; I never saw the note.
Q. Did you ever see any entry on the books of the bank for y such note?
A. I could not say now.

Testimony of E. G. Keith.

Q. You say you think the note was given on the evening of the same day; do you mean on the evening of Monday, the 3d or the evening of Tuesday, the 4th.

A. I think it was given on that day—that is my remembrance.

Q. You mean Monday?

A. Monday.

Q. But your recollection about that, and not seeing the note is simply the recollection of what you heard and not your own personal knowledge?

A. The reason is (I don't know whether I have a right to state this), on Tuesday I sort of half repented of giving this money and I wanted to know if the money had been passed to the credit, and they said it had, and so I had nothing further to say; that is the way I recollect that it was done that day; at least I supposed it was.

Q. Did you not, Mr. Keith, make it a condition of loaning this $10,000 that not only the last sum of $10,000 but also the $40,000 which the Fargo Company then owed you at that time should be included in judgment notes?

A. Yes, sir.

Q. That was to be the arrangement and the condition upon which this $10,000 was loaned, was it not?

A. Yes, sir.

Q. Now, the $40,000 were not secured by judgment notes to your bank on Monday or even on Tuesday, were they?

A. The promise was given that they would be, but I cannot tell what time they were given.

Q. You left the details of this matter to your attorney, did you not, Mr. Follansbee?

A. Mr. Follansbee and Mr. Jones had charge of it.

Q. And the time for which the notes were to run, and everything of that kind, was left to them?

A. Yes.

Q. All the details?

A. Pretty much all the details.

Q. Do you know when the two $25,000 notes were actually delivered to the bank or to the attorneys of the bank?

A. I do not.

Q. They were not delivered to you as an officer of the bank personally?

A. No, sir.

Q. And the $10,000 note which you spoke of, or which Mr. Follansbee says, was not given to you?

A. No; it went through the hands of one of the cashiers of the bank. Testimony of E. G. Keith.

Q. In your affidavit filed in this cause, Mr. Keith, you say—I make the following statement on page 166 of the record in this case: "Affiant further says that thereafter the said C. Fargo, president as aforesaid, reported that he had got the authority from his company, authorizing him to execute said judgment notes aforesaid. Whereupon, the said bank loaned the said C. H. Fargo & Co. said additional sum of $10,000, and received its two judgment promissory notes therefrom, for the sum of twenty-five thousand dollars ($25,000) each, and upon receipt of the same paid it over to said C. E. Fargo, as president of the said C. H. Fargo & Co., said sum of $10,000, and surrendered to him said plain notes, evidencing said indebtedness of $40,000 aforesaid." Now, that statement is substantially true, is it not, Mr. Keith?

A. I think it is, but I did not attend to the details.

Q. That is as you understood the transaction at the time it occurred, and at the time you made this affidavit?

A. It is. I do not think I thought at that time about this $10,000 which went to the credit subsequently. Those two twenty-five thousand dollar notes—I do not know as I ever saw those two twenty-five thousand dollar notes.

Q. Well, the fact is that you have not now any distinct recollection of any $10,000 note, either plain or judgment note, having intervened here between the actual loaning of this money and the receipt of the two $25,000 judgment notes, have you? You have not any distinct recollection of your own knowledge of it now, have you?

A. I do not think that the note ever passed through my hands, but I have this recollection that a note was given and the money was passed to their credit.

Q. Was that $10,000 note a judgment note or a plain note?

A. I could not remember—I did not see the note.

Q. By whom was this affidavit to which I have referred, which was filed in this case, prepared, Mr. Keith? Was that prepared by Mr. Follansbee?

A. I think it was.

Q. At the time that you agreed to make this $10,000 loan, you had information that it was necessary to get the authority of the directors for the execution of the notes which were required for the whole $50,000, did you not?

A. If they were to be judgment notes, yes.

Testimony of E. G. Keith.

Q. And you demanded judgment notes?

A. Yes, sir.

Q. And you learned on the same day of the relations between the Fargo Company and the rubber companies?

A. Yes, sir.

Q. Within a few hours after the proposition to borrow $10,000 additional was first made to you?

A. Within an hour or two, I should say.

Q. Now, what did you learn about the condition of affairs as between the Fargo Company and the rubber companies at that time?

A. I think it was told me that evening that they owed the rubber companies something like $150,000—I do not know but Mr. Fargo told me that, really. I had been aware that they were large creditors ever since 1893.

Q. Did you learn anything about the nature of the securities which the rubber companies held?

A. No, sir; I did not know anything about that until, I think, Mr. Porter told me later.

Q. Was that on Monday, or later?

A. That was on Monday.

Q. What did Mr. Porter tell you with reference to the securities which the rubber companies held?

A. I think he said that the rubber companies held judgment notes for about $140,000; if I remember right, it was not for the whole indebtedness but was about that sum.

Q. Did he tell you anything about the make-up of the board of directors at that time?

A. No; he never said anything about that; I think I asked him the question when the judgment notes would be made, and he said it would be easy to make them—that the directors were all in that office or could be gotten.

Q. Had C. H. Fargo & Co. told you anything about the fact that the rubber companies held judgment notes for such a large amount?

A. No, sir.

Q. After you learned that fact, what did you do, if anything, in relation to the consummation of this additional loan?

A. I think I had wanted Tuesday to make that loan and had told him that he could have it, and when the fact was made known to me that they had judgment notes, the information was coupled with an assurance that we should come in on the same level that they were.

Q. That was on Monday, the 3d day of August?
A. Yes, sir.
Q. And that was before the money was placed to the credit of e Fargo Company?
A. I think it was—I could not exactly say as to the date, hether that money was placed to the credit on Monday after-on or on Tuesday, but I am inclined to think it was on Tues-ay.
Q. Did you receive that information and that proposition or tatement from Mr. Porter, before the $10,000 was demanded?
A. Not before the $10,000 was promised, but whether it was dvanced I cannot say.
Q. I mean before it was advanced?
A. That I cannot say.
Q. What is your best recollection as to that, as to whether ou received that information and the understanding that you ould be treated on a par with the rubber companies, with refer-nce to the time the money was actually advanced by the bank?
A. I should say that the agreemen was made on Monday fternoon, and this information was given on Monday evening, nd the $10,000 placed to their credit some time Tuesday; that is e best recollection I have, but it may not be correct.
Q. Did you yourself give the direction to place this $10,000 to e credit of the Fargos, or was it done by some other officer of e bank?
A. It was done by my direction, but the amount was not laced to their credit till some sort of an obligation, I do not now what it was, came in.
Q. When did you give that direction, with reference to your nterview with Mr. Porter?
A. That direction was given, at least our cashiers were in-ormed, that Mr. Fargo would have that money directly after my rst interview with him, that was during banking hours on onday.
Q. That is, you mean by that, you informed the cashier that ou had promised to let the Fargos have $10,000?
A. Yes, sir.
Q. But they were not to have that till they had given a judg-ent note for that and the other $40,000 which they already wed?
A. Yes, sir.

Testimony of E. G. Keith.

Q. As a condition precedent to their getting that money?

A. That was the understanding, that they were to give judgment notes for all they owed the bank.

Q. Now, I understand you, Mr. Keith, that at the time Mr. Fargo made application for this money, he stated that he and his brother had pledged their personal stock which they had out of the Metropolitan National Bank for security for about the amount of money?

A. Yes, sir.

Q. And that he wanted to take up those securities—release those securities?

A. He said he had to save those securities.

Q. And he was entitled to get this amount of money out of the Fargo Company?

A. He said the Fargo Company owed that money; he had advanced it to them by borrowing on this stock?

Q. And that he was entitled to have it paid back?

A. Yes, sir.

Q. And you understood that in that way, he, C. E. Fargo and his brother, were to immediately get this $10,000?

A. Yes, sir.

Q. Did he state to you of whom he had borrowed that $10,000 or to whom they had pledged those securities?

A. I do not think he did; I know pretty nearly because I have been informed by Lobdell, Farwell & Co. that they had negotiated the loan to some country banks on this collateral.

Q. Were the managers of the bank, or the institution, who held these collateral securities, were they any relatives of the Fargos, do you know?

A. I think not; my remembrance now is that one was the First National Bank of Traverse City, Michigan; I never knew there was any relations between any of them.

Q. You have no personal knowledge as to when the Fargos received this $10,000 actually, or when they checked it out?

A. No; I have not.

Q. And you have no personal knowledge as to when the two $25,000 judgment notes were given?

A. No, sir; I supposed they were given—my understanding was they were given on Tuesday, but I do not know that except ing from hearsay.

Q. You spoke, I think, of leaving the city about that time?

A. I left the city on Wednesday morning at 11 o'clock, and the

matter had not then been fully consummated—the arrangement had not been made. Testimony of E. G. Keith.

Q. That was the 5th of August, wasn't it?

A. Yes, sir; I believe it was that, but I could not say.

Q. Now, have you given us all that you learned from Mr. Porter with reference to the judgment notes which the rubber companies held, at this first interview with Mr. Porter?

A. The only recollection I have about it is that Mr. Porter said the judgment notes had all been fixed up before Mr. Beale went away, and that it did not quite cover the indebtedness that is about my recollection, that there was some indebtedness that was not covered by these judgment notes they already held.

Q. Did Mr. Porter say anything to you as to what the rubber companies were going to do with their judgment notes?

A. He said they intended to enter up judgment.

Q. He told you that on Monday afternoon?

A. I got that impression on Monday evening, before I went home that day.

Q. Then of course you understood on Monday that the Fargo Company would have to fail?

A. Yes, in a sense. What I supposed was that it was some stoppage for the purpose of reorganization and going on, as had been done in 1893.

Q. You knew that the rubber companies had judgment notes for this large amount of money on Monday afternoon, and knew that they proposed to take action upon those judgment notes immediately—within a very short time?

A. That was the talk that night; I think they had not definitely decided what to do; I do not think the final conclusion was made; they were talking about what should be done up to say about half-past 6, and I left Mr. Follansbee and Mr. Jones there without their having concluded what they would do.

Q. Was anything said by Mr. Porter or anyone else that afternoon as to when judgment would be entered up on these notes by the rubber companies?

A. No, sir; no definite time given then when it would be done.

Q. Just what did Mr. Porter say to you upon that subject, Mr. Keith?

A. Mr. Porter said they held judgment notes to the amount of $40,000, and that, I think he said, that the book accounts would satisfy them all—the book accounts were something like $25,000, but that he thought they had better have those assigned

Testimony of E. G. Keith.

and they would collect them through their office, or something of that kind.

Q. That was mentioned in the first conversation with Mr. Porter, wasn't it?

A. It was mentioned that evening.

Q. Did they say they held an assignment of the book accounts or that they proposed to get an assignment of the book accounts?

A. He said that they proposed to get as assignment of the book accounts; I did not understand that they held anything except their judgment notes.

Q. What did you understand Mr. Porter's relation was to the company, or to the rubber companies—to the Fargo Company or to the rubber companies?

A. He was acting in Mr. Beale's place as attorney for them.

Q. For the rubber companies?

A. Yes, sir.

Q. For the rubber companies?

Q. Then you knew in addition—you ascertained, in addition to the fact that the rubber companies held the judgment notes for $140,000, that they were proposing to take an assignment of the book accounts of C. H. Fargo & Co.? That they either had or proposed to?

A. Yes; I understood him that they would make the collection of those book accounts through their office.

Q. Did you talk with anyone alse except C. E. Fargo and Mr. Porter with reference to this transaction?

A. Pretty much all of my conversation after this first interview with Mr. Fargo was with Mr. Porter.

Q. Did you have a subsequent interview with Mr. Fargo after seeing Mr. Porter?

A. I think there was a general talk; he was there in the office and there was general conversation between them all.

Q. Was he present at the time you say Mr. Porter had the conversation with you?

A. No, sir; about the time of the conversation in which he said they held the judgment notes, he was not there then.

Q. Did you on Tuesday have a conversation with Mr. Porter with reference to this matter?

A. I do not think I did.

Q. Did you with Mr. Fargo?

A. I cannot recollect any conversation with either one of

em; I left the matter pretty much in the hands of Mr. Jones nd Mr. Follansbee to look after, after that. Testimony of E. G. Keith

Q. Did you learn anything about the constitution of the board directors on Monday?

A. The only thing I ever knew about the board of directors as, I think, I asked when these judgment notes would be given nd Mr. Porter said the directors are here in the office and can e called together, and we can fix this up right off. I do not ollect there was any other conversation regarding the constiution of the board of directors at all, and that was in a casual ay as to how the judgment notes would be made.

Q. Did you at any time between Monday and Wednesday arn that a majority of the board of directors was made up of eople in the office of Isham, Lincoln & Beale?

A. No, sir; I did not know that.

Q. What did you hear or learn on Monday or Tuesday with eference to any change that had been made in the board of irectors?

A. I did not hear anything—never knew it until after I came ack from Charlevoix, I do not think.

Q. Did it occur to you as at all singular that Mr. Porter, who presented as you supposed the rubber companies, seemed to e able to say to you that a number of the directors were there their office and that the action necessary to give authority for e execution of those judgment notes would be had there?

A. No; I supposed from his, Mr. Fargo's, manner, and from hat Mr. Porter had said, that Mr. Fargo had virtually dele ted the whole business into Mr. Porter's hands, and he was to andle it to suit himself; that he was a mere tool in his hands.

Mr. Beale: That Mr. Fargo was a tool in Mr. Porter's hands?

The Witness: Yes.

Q. That is to say, you learned then and there and supposed hat the Fargo Company was substantially in the hands of the ttorneys of the rubber companies?

A. Yes; I had good reason to believe that because they had en in the former transaction in 1893, at the time they got that xtension in the panic of 1893.

Q. There was no concealment of the fact by Mr. Porter that e represented the rubber companies?

A. No, sir.

Q. He assumed to represent the rubber companies, did he, at hat interview?

A. Yes, sir.

Testimony of E. G. Keith.

Q. And when you were talking with him, you supposed you were talking with the attorney for the rubber companies?

A. Yes, sir.

Q. Were you of the impression either from what Mr. Fargo said, or Mr. Fargo's manner, that the affairs of the Fargo Company were substantially in the hands of the rubber companies?

A. I think they had given me the impression that the rubber companies controlled.

Q. Yes; in some manner, you did not exactly know how?

A. I did not know how.

Q. You inferred from the large indebtedness of the Fargo Company to the rubber companies that they were very largely interested in the Fargo Company, and that accordingly they held all these judgment notes in this large amount, and that for those reasons, among others, Mr. Fargo had substantially—the Fargo Company had substantially put itself and its assets in the hands of the rubber companies?

A. Yes; I think Mr. Fargo told me at this interview, or during that afternoon, that the rubber companies held a majority of all that he owed; that is, that he owed for himself and the rest put together.

Q. And you understood at that time, or Monday, that in order to make the arrangements with reference to obtaining a pro rata distributive share of the proceeds of the assets of the C. H. Fargo Company, it was necessary for you to go to the representative of the rubber companies?

A. Yes, sir.

Q. That it was a matter which they controlled, and not the Fargo Company?

A. Mr. Fargo had said that that should be the way it should be fixed.

Q. He said that to you when he first talked to you about making this additional loan?

A. He said that—I think his assurance was that we should not be—that no one else should be allowed to get ahead of us in any way, in any transaction.

Q. By the word "us," you mean the bank and the rubber companies?

A. He did not say anything about the rubber companies, but the bank.

Q. And in order to effectuate that, the rubber companies would have to make an arrangement with you?

A. Yes, sir.

Testimony of E. G. Keith.

Q. Otherwise the rubber companies might be ahead of you?

A. Might get ahead of us.

Q. That was substantially the understanding between you and Mr. Fargo at that time?

A. Yes, sir.

Q. On Monday, when he first, as I understand you—and if I am not correct, Mr. Keith, you will correct me—that was the substantial understanding on Monday when Mr. Fargo first applied for the loan of this $10,000, the additional $10,000; is that right?

A. That is right.

Mr. Beale: And also that the rubber companies also had judgment notes?

The Witness: No; he did not tell me they had judgment notes; he told me he owed the rubber companies so much and that it was more than half the indebtedness.

Mr. Beale: That he would have to make some arrangement with them?

The Witness: That he would have to take care of them and see that they were satisfied, whatever it was. I inferred that always, because he had—in the former arrangement with the rubber companies and the bank we had shared.

Mr. Follansbee: Do you mean the former arrangement in 1893?

The Witness: Yes; in 1893, when we took judgment notes running during some period, and the rubber companies and ourselves were together in that. I was explaining why I was not at all surprised at anything of that kind, that is all.

Q. Mr. Keith, in your affidavit filed in this cause, on page 166 of the record, it appears that you make the following statement—I will read back a little ways so that you may get the connection: "Affiant further states that the said C. H. Fargo & Co. had theretofore given the said bank its judgment promissory notes for the indebtedness from time to time owing by it to said bank, and after due consideration, this affiant finally proposed and agreed with the president of the said corporation, that in case the said C. H. Fargo & Co. would give its judgment notes, not only for the $10,000 so requested to be loaned, but for the entire indebtedness that would then be owing by said C. H. Fargo & Co. to said bank, that said bank would loan said company said additional sum of $10,000.

Affiant further states that the president of said company then

timony of E. Keith.

and there expressed his willingness so to do, and then and there informed affiant that said company had theretofore given its judgment notes to the United States Rubber Company and L. Candee & Company for the amounts that it was indebted to them respectively, and that he would get the necessary authority from his company authorizing it to make judgment notes to said bank for the amount of its indebtedness to said bank as aforesaid."

Now, this is substantially a statement of facts, is it not?

A. It is; possibly I would not say he told me; I knew that he owed the rubber companies this sum of money, but I do not think I should say to-day—I should not say that he told me that the indebtedness was in the form of judgment notes, but it may have been he said that. I know that he did say this, that the rubber companies, he was indebted to them for so much, but whether he said in the form of judgment notes, now, I must say—

Q. Your recollection of the matter at the time this affidavit was made by you, which was in October, 1896, was fresher perhaps than it is now. Must have been fresher and more accurate than at the present time?

A. Probably.

Q. Was there any conversation between you and Mr. C. F. Fargo on Monday, the 3d day of August, with reference to the factory at Dixon?

A. All that I recollect about that was he said the factory was worth, in enumerating his assets, I think the factory was spoken of as having so much merchandise there and cost so much; I do not recollect of anything else.

Q. Was there anything said on that day by Mr. Fargo to you or by you to Mr. Fargo, with reference to the transfer of the factory at Dixon to the Metropolitan National Bank?

A. I cannot remember that there was.

Q. Was there on Tuesday, the day following?

A. I have no recollection of any conversation with Mr. Fargo after Monday, and this first came to my knowledge later, I think through Mr. Follansbee or Mr. Jones.

Q. Was there any conversation between you and Mr. Porter at your interview with him on Monday with reference to the transfer of the Dixon property to the bank?

A. I do not think so.

Q. When did you first learn of that transfer?

A. If I should say to-day, I should say I did not know of it until I read it in the Chicago Tribune.

Testimony of E. G. Keith.

Q. Then you knew nothing about it until it was a fact?
A. No.
Q. That is to say, you knew nothing about it until after it had occurred?
A. No, sir; not until after possession had been given, I do not think.
Q. Is your recollection clear about that and positive, that you had no conversation with any officers of the Fargo Company upon that subject?
A. I think so.
Q. Until after the transfer was actually made?
A. I should say so.
Q. Then you knew nothing, except as reported to you about that transaction?
A. I did not.
Q. Did you have any conversation with your attorneys with reference to any additional security or any conveyance of any property from the Fargo Company before you left the city on Wednesday?
A. No, sir.
Q. That subject was not discussed by you with anybody in connection with the Fargo deal?
A. No; I do not think there was any up to the time I left; I left the bank on Wednesday morning at 10 o'clock, when there had been no definite conclusions arrived at as to what disposition should be made of this factory.
Q. Had there been anything said about it, or any proposition made thereon?
A. I do not think so—not to me.
Q. Then we are to understand broadly that the matter of the transfer of the Dixon property to the bank had not been broached or discussed with you personally before you left the city on Wednesday?
A. No, sir; I have no recollection of anything of that kind.
Q. Now, on the same page of the record to which I have last referred, on page 166, your affidavit filed in this case, to which I have called your attention heretofore, goes on to state—"Affiant further states that thereupon he caused steps to be taken to ascertain just what advantages the said C. H. Fargo & Co. had given to said two companies aforesaid, and having learned that they were entitled, under their agreement with said company, to enter upon their judgments, in advance of anyone else

Testimony of E. D. Keith.

as aforesaid, and having learned, also, the extent of the indebtedness of the said C. H. Fargo & Co. to them, he caused further steps to be taken looking towards the payment or security of the said two judgment notes aforesaid, and that upon receiving a proposition from the said C. H. Fargo & Co. to purchase from it its manufacturing plant at Dixon, Illinois, for the sum of twenty-five thousand dollars ($25,000), he took said suggestion under consideration with a view of determining the desirability thereof to said bank."

That was your statement of the matter in the affidavit; is that a substantially true and correct statement, Mr. Keith?

A. I think it is. Of course, all that was done by the agent of the bank and subsequently to my going away.

Q. But you said in this affidavit "he," meaning the affiant, took said suggestion under consideration with a view of determining the desirability thereof to said bank?

A. That affidavit means, I suppose, that Mr. Jones and Mr. Follansbee, and those who acted in my place in that particular transaction.

Q. At the foot of page 167 you have said in that same affidavit as follows: "Affiant further states that in view of what he learned as to the determination of the said United States Rubber Company, and L. Candee & Company, as aforesaid, he determined to endeavor to secure the payment of the bank's said two notes as aforesaid, and to that end he accepted the proposition of the said C. H. Fargo & Co. for the transfer of its plant at Dixon in payment of one of said notes of $25,000 as aforesaid, and he accordingly received deeds of said property and canceled and surrendered one of said notes, and thereupon caused a judgment to be entered upon the other of said notes in the Circuit Court of Cook County, Illinois, and levies to be made upon the tangible property of said C. H. Fargo & Co. at Chicago and at Dixon."

A. So far as that is concerned, of course, individually, I did not do that, but I suppose I signed that affidavit simply because the bank did it as a corporation and in my stead.

Q. The facts stated in the affidavit were believed by you at the time you signed the affidavit to be true?

A. Yes, sir.

Q. And you believed the statement to be true from what you knew personally and from what was stated to you by those who participated in the charge of that matter?

A. Yes.

Testimony of E. G. Keith.

Q. In what respect, now, are these statements which I have just read to you not strictly true, Mr. Keith?

A. Well, the statements regarding all that transaction about the Dixon factory were unknown to me until I returned to the city from Charlevoix or at least were known to me as hearsay. I think I must have noticed in the Chicago Tribune something about it; I remember reading about it at Charlevoix. The first information I got was in the newspaper—the first information I got as to the trouble of the Fargo Company.

Q. Aside from the questions of your affidavit being based upon information instead of upon your personal knowledge, and aside from the statements that you personally acted in the matter, in what respect are the facts therein stated untrue, if in any?

A. I do not think the facts are in any way untrue; I think the bank actually did what is stated there, but I was not individually aware of it at the time.

Q. You did learn, as stated in your affidavit, of the extent of the indebtedness to the United States Rubber Company and L. Candee & Company, and also learned that they had some kind of an agreement with the Fargo Company by which they were authorized to secure their indebtedness in advance of any other creditors of the company, did you?

A. Yes, sir.

Q. You learned that from Mr. Porter, I suppose?

A. Yes, sir.

Q. And on Monday, the 3d day of August?

A. Yes.

Q. And it was in view of that situation that the arrangement was made between you and the rubber companies, by which you were to stand on an equal footing with them?

A. Yes.

Q. Did that enter into the consideration for the advance of this $10,000?

A. When he asked for the $10,000, I said to him how much do you owe and who do you owe it to, and he told me substantially about what has been stated, to the rubber companies first, and then he enumerated his assets; then I said, "If we are going to advance this money we certainly should have judgment notes for all that we have loaned you now," stating to him the desperate condition financially that things were getting in—I told him I thought we were entitled to it, and he agreed with me.

Q. Well, you would not have loaned the $10,000 without ascertaining the manner in which the—ascertaining the securities

Testimony of E. G. Keith.

the rubber companies had unless it had been agreed that you were to be let in with them and stand upon the same basis as they were, and share pro rata, would you?

A. No, sir.

Q. Otherwise they might get the advantage of you and leave you out in the cold?

A. My understanding was that Mr. Fargo would treat us as well as he treated anybody, if I did it.

Q. And that the rubber companies would not take any advantage of you, that is to say, Mr. Fargo would not allow anybody to take any other advantage?

A. That is right.

Q. But the rubber companies had those judgment notes on which they could enter up judgment at any time, and you had a definite and distinct understanding with the rubber companies in the form of the agreement which has been introduced in evidence here?

The Witness: When I agreed with him to give him that $10,000 I had not seen Mr. Porter at all and I did not know anything about the rubber companies.

Q. But before the matter was consummated—

A. Yes, but I had entered into an agreement that he should have the $10,000.

Q. On the representations that he made?

A. On the representations he made that there was ample security for everybody, and if he would give us judgment notes we would consider that sufficient security for us, for the whole amount.

Q. You had an understanding with Mr. Porter that they were to take no advantage of you under their judgment notes?

A. When Mr. Porter came to see me, he told me he had come to see me, or he sent for me, I do not recollect which, at the instance of Mr. Fargo, to see that we did not either of us get the advantage of one another.

Q. And that agreement was afterwards put in form, was it not?

A. Yes.

Q. But there was a substantial understanding between you and Mr. Porter at the time that neither of you were to take advantage of the other?

A. Yes.

Q. If at any time between January, 1896, and the 1st of August

u had known that a majority of the board of directors of the rgo Company was made up of employes in the office of Messrs. am, Lincoln & Beale, the attorneys for the rubber companies, d that the Fargo Company was so largely indebted to the ber companies, would you have given them credit?

A. I think not. It would have alarmed me very much. I s all through the spring waiting for their statement and won- ing why it did not come, from January on, and I had an idea at the company was all right because of its success in the ball-bearing" business, but they first begged off on this state- nt, and it was sort of suspicious; I did not know what to think it. I certainly should not have given them the indebtedness thout consulting our attorney if I had known of this change in eir condition—the change in their directors. They were squar up all the while. I supposed that they had had no occasion o time—to take that statement, that there had no unfavor- le change taken place in the condition of the company or its rchandise, and the bank account showed that they had re- ed their indebtedness in January from $40,000 to $20,000 be- en that and June, and then it went back again.

Q. What I am asking you about now is, they represented to u from time to time during that period that no unfavorable ange had taken place in the condition of their business?

A. They represented to me that they were making a great al of money out of this "ball-bearing" shoe.

Re direct Examination by Mr. Beale.

Q. Referring for a moment to your affidavit, Mr. Keith, if in ce of the pronouns referring to you personally there had been erence in many of these places to the bank, the affidavit uld be true and correct, would it not?

A. Yes, sir; as I understood.

Q. And understand now?

A. Yes, sir.

Q. There was an interim between your interviews with Mr. rgo on about the first part of August, was there not? That to say, on Tuesday you had no interviews with anybody, that on Tuesday, August 4th?

A. I do not think so, because I was so engaged in the Dia-

Testimony of E. G. Keith.

mond Match business I do not recollect anything else at th time

Q You think you had no interview with anybody on that da about it, do you?

A No.

Q. Are there any circumstances which tend to fix Monday the 3d of August, particularly in your mind, positively, as th day on which you made the agreement with Mr. Fargo to let hi have the $10,000?

A Simply because I went away on Wednesday; I knew—th is so—that day I went away there were a good many things o curred that day. I had two or three telegrams from New Yo about the Diamond Match business and other things happene which would fix it very firmly in my mind that Wednesday wa the day I left and Tuesday was the day following the evening spent at Phil Armour's on the Diamond Match business

Q. And you remember it was a day or two before you wer away that you had this talk with Mr. Fargo, and not on the sam day?

A Yes, sir; not on the same day.

Q. You have spoken of interviews with Mr. Porter on Mo day; now, if you were informed or if it were established satis factorily to you that Mr. Porter was not in the City of Chicago Monday, would you not consider that you were mistaken i testifying to the fact that you had interviews with him on Mo day? If he did not return to the City of Chicago, after leaving on Saturday night, until Tuesday morning, if you were informe of that and it was established to be a fact?

A I should have to admit that I was wrong on my day

Q. Then your recollection would be that you did not s him until Wednesday, would it not?

A. I would not have any way of placing it except—I will t you now, it occurs to me that the "Manitou" always sailed Thursday, that is so—I am mistaken in that—I went away Thursday.

Q. In other words, your case presents a better light than y put it in. You did not learn of any of these things unt Wednesday?

A. The "Manitou" did not go away until Thursday morning I know now that I came down to the dock but she did not get from her trip, and we waited till nearly 1 o'clock for the boa come in. I recollect that Thursday was the day of the sailing

Testimony of E. G. Keith.

Q. You went to Charlevoix on Thursday morning then—probably Thursday morning, did you?

A. I think probably I did. But I do know how this Fargo matter and the Diamond Match business, which was on Monday, were interwoven. I know that I was at Mr. Armour's till 1 or 2 o'clock in the morning, I recollect that. The Diamond Match matter was more on my mind than the Fargo matter, and I got it mixed up. But I was sure it was on Wednesday all the time because of the Diamond Match matter on Monday; and I went home that night very late, and that night after I got home I had two messages from Mr. Armour to see him at his house at once, and I hadn't finished my dinner, which was after 7 o'clock and a very late hour for me to have dinner usually. It must have been Thursday that I went away, for this reason that I received a letter from my brother, Edson Keith, who was at that time in New York, after I went down to take the boat, with reference to the Diamond Match business; there was quite a long letter regarding the comments of people there about it; I recollect that letter most because he said that the Diamond Match matter was referred to in the New York papers on Tuesday morning and he had time to write that letter and get it to me before I left the city, so it could not have been Wednesday.

Q. Because it left New York Tuesday?

A. Because it left New York Tuesday.

Q. Mr. Keith, after refreshing your recollection and being aided by the discussion of counsel that has taken place here, you are confident that it was on Monday, August 3d, are you, that you had your interview with Mr. Fargo in reference to letting his company have $10,000?

A. Yes.

Q. You had entire confidence in Charles E. Fargo at that time, had you not?

A. Yes, sir.

Q. And if Charles E. Fargo at that time promised to bring in within a day or two the properly executed and authorized judgment notes of his company, would you not have been likely to allow the money to be placed to the credit of the company?

A. Well, I should after what he told me, yes.

Q. In view of what he stated the assets of the company to be?

A. In view of what he stated to me.

Q. Are you still confident that it was on Monday you had an interview with Mr. Porter?

A. I thought I was confident of the whole business, but from

Testimony of E. G. Keith.

the facts stated I can see at once my recollection was not right as to the time I left the city, therefore I would not be sure.

Q. You knew nothing whatever about the status of the board of directors of the Fargo Company until your interview with Mr. Porter?

A. Never; I did not know anything then, only what he told me in a casual way.

Q. You made an observation in your direct testimony which possibly implied that you considered that the rubber companies had the control of the Fargo Company in 1896, as they did in 1893. Did you mean that there was any control, as you understood it, of the Fargo Company by the rubber companies in 1893?

A. No; no control beyond the fact that Mr. Fargo apparently was very friendly with the agent of the Candee Company, and did whatever he asked him to do.

Q. And he said he proposed to treat the bank and the rubber companies in precisely the same way?

A. Yes.

Q. And considered he was merely bound not to prefer the bank?

A. He said that Candee & Company in 1893 advanced them a great deal of money besides selling them merchandise, and I said to him at that time I did not see why he should treat the bank any worse than the men he bought merchandise of. He said that Candee & Company had advanced him as much money as the bank had.

Q. So, in fact, there were no indications at that time, in 1893, were there, of any actual or legal control of the Fargo Company by the rubber companies?

A. No; I did not know anything beyond just a friendly disposition on his part about help.

Q. The indebtedness the Fargo Company then owed the bank in 1893 was subsequently paid off, was it not?

A. All paid.

Q. And it amounted to over $100,000?

A. $130,000.

Q. The indebtedness of the Fargos on which this Metropolitan Bank stock was pledged was not due to your bank, or any part of it?

A. No, sir; we are not allowed by law to loan on our own stock.

Q. And you did not?

. We have always abided by the law. Testimony of E. G. Keith.
. You had no interest in that loan in any way?
. No, sir; not a particle.

is agreed by counsel for all parties that the record in this case l be printed at the expense of the receivership, under the super- on of the receiver's counsel, Isham, Lincoln & Beale, proof- ts to be submitted to all counsel in the case before final printing.

ARLES E. FARGO, recalled by counsel for the rubber com- Testimony of Chas. E. Fargo.
nies for re-examination on certain points already covered, nd for examination on other points on behalf of the rubber mpanies:

Examination by Mr. Beale.

. Mr. Fargo, in your previous testimony you stated that e was no change made in the general method of doing busi- s and consigning goods from the United States Rubber Com- y to the Fargo Company as previously conducted to the ngement of January, 1896, and that you did not remember making of any new written contract in or about April, 1896. nd you here this paper and ask you to look at it and state ther you recognize it, and if so, state what it is.
. It is a contract that I signed.
r. Beale: This is a contract in writing, or partly in print and Introduction of Defendants' Exhibit 3.
ly in writing, dated April 10, 1896, between the United States ber Company and C. H. Fargo & Co. in relation to the con- ment of rubber boots and shoes for the year ending March 897. I offer this contract in evidence.
he Master: Said contract is received and marked "De- lants' Exhibit No. 3." (See p. 405.)
. This contract was operated under, was it, Mr. Fargo, and t into practical effect?
. Yes, sir.
. Was there any other contract in writing entered into be- en your company and the United States Rubber Company ither of the rubber companies relating to the selling or con- ment of goods with the exception of a little supplemental ement which I will hand you hereafter?
. This form of contract is the only one that we used, and

Testimony of Chas. E. Fargo.

this particular contract, with its supplement is all that I remember of operating under at all.

Q. To the best of your recollection then that is the only contract which existed between either of the rubber companies and C. H. Fargo & Co. after this date?

A. Yes, sir.

Q. Exclusive of the little supplement thereto?

A. Yes.

Q. I hand you now what purports to be a written agreement, partly written and partly printed, supplemental to the contract just introduced in evidence. Was that contract executed by your company?

A. Yes, sir.

Q. And went into force?

A. Yes, sir.

Q. And that supplemental contract and the original contract, were the only ones in existence between your company and the United States Rubber Company after April, 1896?

A. Yes, sir.

Q. You desire, then, Mr. Fargo, to correct your testimony heretofore given when you stated that you believed that no formal contract was made in the year 1896, do you?

A. I did not remember that any contract had been entered into in 1896 until seeing my own signature.

Q. I now hand you what purports to be an agreement made the 2d day of May, 1895, between the United States Rubber Company and C. H. Fargo & Co., in relation to consignment of rubber boots and shoes for the year ending March 31, 1896; will you please look at that and identify it, if you can?

A. That is a contract that I signed.

Q. That is an original?

A. Yes, sir.

Introduction of Defendants' Exhibit 1.

Mr. Beale: I offer that in evidence.

The Master: Said contract is received and marked Defendants' Exhibit No. 1. (See page 400.)

Q. I also hand you what purports to be a supplemental agreement, also dated May 2, 1895, between United States Rubber Company and C. H. Fargo & Co., a supplemental contract to this agreement of May 2, 1895; will you please look at that and see if you can identify that?

A. I signed that also.

Q. The original agreement and the supplemental agreement of May 2, 1895, went into practical effect did they, and were

ried out by your company and the United States Rubber Com- Testimony of Chas. E. Fargo.
ny?

A. Yes, sir.

Q. From the time these contracts were executed, was there change whatever in the contract relations, or the methods doing business, consigning rubber boots and shoes, as between United States Rubber Company and C. H. Fargo & Co. up the time of the execution of the new contract in April, 1896?

A. No, sir.

Q. Were there any other contracts in writing executed in any y in relation to the business other than those I have shown in the years 1895 and 1896?

A. That is, with these companies?

Q. That is what I mean, between the Fargo Company and se companies?

A. No, sir.

Mr. Beale: I offer both of the supplemental contracts in evi- Introduction of Defendants' Exhibits 2, & 4.
nce.

The Master: Said supplemental contracts are received and rked Defendant's Exhibits Nos. 2 and 4, respectively. (See 404, 408.)

Q. Mr. Fargo, how long have you known Mr. Charles L. John- n, of the United States Rubber Company?

A. I have known him for many years; I cannot tell you ex- tly how long.

Q. Approximately?

A. For more than ten years.

Q. Known him very well, have you not, and your relations ve always been very pleasant?

A. Yes, sir.

Q. I hand you the following papers—will you please look at em and identify them and state what they are.

A. They are all letters written by C. H. Fargo & Co. to Mr. M. Sadler, of the United States Rubber Company.

Q. And those letters you have there were all written and sent, re they?

A. Yes, sir.

Mr. Beale: I offer these letters in evidence, being a letter Introduction of Defendants' Exhibits 5, 6, 7, 8.
ted April 27, 1896, to Mr. H. M. Sadler, signed C. H. Fargo & Co., Charles E. Fargo; a letter of May 4, 1896, to Mr. H. M. Sadler, intended to be the same person, signed C. H. Fargo & Co., Charles E. Fargo; letter of May 14, 1896, to Mr. H. M. Sadler, signed C. H. Fargo & Co., by Charles E. Fargo, president;

Testimony of Chas. E. Fargo.

letter of May 15, 1896, to Mr. H. M. Sadler, Jr., signed C. H. Fa & Co., by Charles E. Fargo, president.

The Master: Said letters are received and marked Defe ants' Exhibits 5, 6, 7 and 8, respectively. See pp. 409, 412.

Q. Mr. Fargo, one of those letters is addressed to Mr. H. Sadler and the others to H. M. Sadler, Jr.; were they all intend to be addressed to the same person?

A. Yes, sir.

Q. The Mr. Sadler mentioned in connection with this ca

A. Yes, sir; the only Mr. Sadler I knew.

Q. In one of those letters, Mr. Fargo, you request the retu of the judgment note for $45,000, executed in favor of L. Cand & Company; state whether or not that note was subsequent returned?

A. It was.

Q. Do you remember when it was returned?

A. I do not remember the exact date.

Q. In your previous testimony you stated that you could n remember whether the unpaid balance due the Candee Comp was a part of the indebtedness existing in their favor prior January 1, 1896, or was a part of the advance then made of $5 000; have you since looked up the matter and can you now testi in regard to it?

A. I know now that the judgment note that was paid off w for money owed the Candee Company prior to January, 1896.

Q. And the existing indebtedness for which ultimately jud ment was taken was a part of the advance of $50,000, was it?

A. Yes, sir.

Q. During the year 1896 you received practically no goo from the Candee Company, did you, had no dealings with them your dealings from that date were with the United States Rub ber Company, were they not?

A. Yes; the United States Rubber Company.

Q. And the indebtedness of about $45,000 existing in Janua was for prior transactions?

A. Yes, sir.

Q. Mr. Fargo, Mr. Fred. Vogel, Junior, testifying in this ca stated as follows in reference to a conversation with you: asked him," him meaning you, " this: I says, ' have you got a judgment notes out, or has anybody got any preferences her and he says, ' no.' " Is that a true statement of the convers tion or any part of the conversation between you and Mr. Vog

Mr. Tenney: I object to the question as incompetent.

A. It is not.

Q. Please state what conversation there was in reference to the subject of judgment notes, if there was any such conversation?

A. Mr. Vogel asked me how much we owed the Metropolitan National Bank, and I told him $40,000. He asked if they had any judgment notes, and I told him no. There was no general question about judgment notes, nor was the subject brought up in any other way.

Q. Did Mr. Vogel ask you in respect to your company's having judgment notes out in favor of any other person or corporation than the Metropolitan National Bank?

A. He did not.

Q. And did you make any statement to him in any way whatever in respect to any other creditor having judgment notes other than the Metropolitan National Bank?

A. I did not.

Q. Did you subsequently and shortly after this conversation, inform other parties of the conversation?

Mr. Tenney: Objected to as immaterial.

A. I did.

Q. Whom did you inform?

A. I informed Mr. Cratty and my brothers.

Q. How soon afterwards, after the conversation occurred?

A. My brothers within a very few minutes, and Mr. Cratty almost immediately—the same day.

Q. Mr. Cratty testified here that according to his recollection there was some change made in January, 1896, in the method of doing business between the United States Rubber Company and the Fargo Company, in respect to consigning goods. What is the fact about that?

A. There was no change in the contract whatever.

Q. What change was made, if any?

A. The only change being a matter of bookkeeping; that is to say, all rubber accounts, whether received or sold, were put in a separate set of books.

Q. At whose request was that?

A. At the request of the rubber companies.

Q. Did the rubber companies request you to have separate bookkeeping and a separate set of books for their consigned goods?

A. They did.

Q. For the future?

Testimony of Chas. E. Fargo.

A. Yes, sir.
Q. And that was done?
A. That was done.
Q. And that was the only change, was it?
A. That was the only change.
Q. I believe you also testified that the Fargo Company were requested at that time to keep all consigned goods separate in its store, and that that was done; that is the fact, is it not?
A. That was done, but I am now under the impression that they had been kept separate for some time prior to that.
Q. That no special change was made at that time?
A. No special change made at that time.
Q. Why are you under that impression?
A. Because at one time there was a so-called custodian for the Candee goods put in there, and when I testified before I thought it was in 1896, but on looking over the books I could not find his name, and concluded that it must have been when they had judgment notes before.
Q. Do you refer to Mr. Hotchkiss?
A. To Mr. Hotchkiss, yes.
Q. Mr. Cratty testified that Mr. Hotchkiss was put in as custodian in 1896; what is your recollection about that fact?
A. I was inclined to think it was in 1896 until I looked up the books; I could not tell certainly, but not finding the name in 1896, I now think it was in 1893.
Q. Was there more than one occasion when a custodian was put in for the consigned goods?
A. No, sir.
Q. That was either in 1893 or 1896?
A. Yes, sir.
Q. Who paid such custodian?
A. C. H. Fargo & Co.
Q. Who was the custodian?
A. A Mr. Hotchkiss; I do not remember his initials.
Q. Was any account kept in the books of the Fargo Company of payments to Mr. Hotchkiss?
A. Yes, sir.
Q. On what books?
A. On the regular books of the Fargo Company—the cash book.
Q. And those show payments to Mr. Hotchkiss—the cash book would show such payments?
A. The cash book must show the payment to Mr. Hotchkiss.
Q. Have you examined the cash books of C. H. Fargo & Co.

m January, 1896, down to ascertain whether they show any yments to a man named Hotchkiss?

A. I examined the cash books for January and February, 96, and do not find the name.

Q. Upon those books?

A. Upon those books.

Q. Do you know anything about the cash books covering the mmer months of 1893?

A. No, sir; I do not.

Q. How long was Mr. Hotchkiss there as custodian?

A. I cannot say exactly, but in the vicinity of two months.

Q. Was he there any such length of time as six months?

A. No, sir.

Q. Was he there longer than three, four or five weeks?

A. I should not think he was.

Q. Approximately that time?

A. Approximately that time.

Q. Why did his services cease as custodian?

A. Because he was not useful to us as we had anticipated s being, and we asked that we might put someone else in to his work.

Q. There was no new custodian substituted for him?

A. Not as a custodian.

Q. The custodianship dropped?

A. The custodianship dropped, at our request.

Q. And your recollection is that that was in connection with he resumption of possession in 1893, and not with this trans- ction of 1896?

A. My recollection is now that it must have been in 1893.

Q. Mr. Cratty testified as tending to verify his recollection hat this matter was all arranged, and that discussion took lace about it, at the Union League Club, when we were there t dinner, and that he believed it was in 1896, and could not have een as long ago as 1893. Do you remember your being at the nion League Club and Mr. Cratty's being there and myself at inner one night discussing the affairs connected with the rub- er companies and the Metropolitan National Bank?

A. I do not remember any such meeting in 1896.

Q. But do you remember such a meeting in 1893?

A. I would not attempt to say the date, but I remember our eeting at the Union League Club.

Q. Do you remember that it was prior to my joining the Gay-

Testimony of Chas. E. Fargo.

lord Club, and that we discussed Mr. Cratty's recent experiences on a fishing trip up there?

A. I remember our having a meeting at the Union League Club, but I would not attempt to say the date now.

Q. Was not that before I was a member of the Gaylord Club, and was not that meeting immediately the occasion of my joining the club?

A. I think it was, because immediately you went up there, and I was not a member of the Gaylord Club at that time.

Q. That was in connection with the affairs of the Metropolitan National Bank that we were meeting there, was it not?

A. Yes, sir.

Q. As between the Metropolitan National Bank and C. H. Fargo & Co.?

A. Yes, sir.

Q. Some stationery has been introduced here, Mr. Fargo, showing letter-heads used after January 9th, I think, 1896, on which E. A. Fargo's name appears as secretary, and he was not secretary; will you explain the use of such stationery?

A. Why, we used whatever stationery we had on hand; some of it might have been ten years old, and had C. H. Fargo's name on it as president.

Q. A mere matter of utility—there was no intention of deceiving anybody?

A. No; there was no intention of deceiving anybody; we used such stationery as we had, and with no thought one way or the other.

Q. You kept using whatever stationery you had on hand?

A. We kept using whatever stationery we had on hand.

Q. Will you please look at that paper now handed you and see if you can identify it?

A. I remember that the provisions of this agreement were discussed—put into form like this.

Q. But you, as I understand you, mean to say that you cannot identify that particular paper, or in any way that particular instrument?

A. I would not know whether it was that one or one like it.

Q. That is what I meant, you cannot identify that particular one?

A. No, sir.

Q. Have you read that?

A. I have read a paper like this.

Q. I mean have you read that one?

Testimony of Chas. E. Fargo.

A. Just now I have glanced it over.

Q. Or one that appears to be the same?

A. Or one that appears to be the same.

Q. State whether to the best of your recollection that paper correctly sets forth what was proposed to be a written agreement in January, 1896, between your company and the United States Rubber Company or Charles L. Johnson?

Mr. Tenney: Objected to as immaterial and incompetent.

A. I should think it was.

Q. Have you any recollection of any points that were intended to be covered by a written agreement that are not in that paper, or are not in that paper correctly?

Mr. Tenney: Same objection.

A. There were points discussed that are probably not in this paper, and because of their being voluminous—the paper being voluminous—we concluded to not have any agreement at all.

Q. Can you remember any such points?

A. No, sir; I cannot remember them now.

Introduction of Defendants' Exhibit 9.

Mr. Beale: I will identify this hereafter, but I will offer it in evidence. It was not executed; I offer it for what it is worth. We will prove the agreement was drawn up and was agreed to as being satisfactory, and finally we concluded to abandon a written agreement.

Mr. Tenney: Objected to as incompetent and immaterial.

The Master: Said form of agreement received in evidence subject to objection, and marked "Defendants' Exhibit 9." (See p. 412.)

Q. When you say that matters were left out, Mr. Fargo, because they were voluminous, have you not in your mind reference to the difficulty, which was discussed at the time, of specifying in detail the several contingencies under which judgment should be entered?

A. That is exactly the point.

Q. That is what you meant?

A. That is what I meant.

Q. We discussed that and said it was impossible for anybody to specify every contingency under which judgment should be entered?

A. That is it exactly.

Q. As a matter of fact, it was agreed, was it not, that the draft of the written agreement or contract prepared was acceptable?

A. Yes, sir.

Evidence taken before Master.

Testimony of Chas. E. Fargo.

Q. But there was a discussion, was there not, in reference to incorporating in the judgment notes a statement that the judgment notes were subject to the written agreement?

A. I do not remember exactly what that discussion was about, that is to say, what there was that seemed to make a possibility of any disagreement—I don't know what.

Q. There was discussion about some further point, was there not—some discussion between you and me?

A. Yes, sir.

Q. There was something desired in connection with the matter by you or suggested by Mr. Cratty, was there not, to which I refused to assent?

A. Yes, sir; there was.

Q. And I objected because I said it was a continuation of new things that we were constantly being asked to put in the agreement, or something of that kind?

A. Something of that sort.

Q. And as a result, we finally waived a written agreement altogether?

A. Yes, sir.

Q. The written agreement was sought by you or the Fargo Company for the protection of the Fargo Company, and not at all for the benefit of the rubber companies, wasn't it?

A. Yes, sir.

Q. Mr. Fargo, although the draft of the proposed written agreement between the Fargo Company and Charles L. Johnson on January, 1896, was not in fact executed, practically the transactions went forward between the company and Mr. Johnson in respect to the advance of money and the arrangements for security precisely in accordance with the terms of the written agreement, and just the same as if it had been executed, did they not?

A. Exactly, as far as I know.

Q. There was no attempt on either side to deviate from the arrangement as proposed by the written agreement, was there?

A. No, sir.

Cross-Examination by Mr. Tenney.

Q. With reference to your conversation with Mr. Vogel, he was endeavoring in the conversation with you to find out the state of your company, was he not?

A. Unquestionably.

Q. And was quite largely interested as a creditor at that time?
A. Yes, sir.
Q. You were asking credit from him—an extension of credit?
A. He was wanting pay for his account; yes.
Q. And you were asking him to extend the time?
A. Yes, sir.
Q. You understood him, didn't you, to desire to know from you what the situation of your company was generally, didn't you?
A. He did not ask me for a statement; of course the trend of his questioning was to know how much we owed.
Q. You understood from him that he desired to know what you generally owed—how your company stood, did you not?
A. Yes, sir.
Q. And you understood him to be inquiring to ascertain from you those facts which would affect the determination of the question of giving the additional credit?
A. Yes, sir.
Q. And included within that would be the question whether or not any other creditor was likely to get ahead of him if he extended the time?
A. He did not ask about any other creditor.
Q. Didn't you so understand that that was what he was desiring to find out was all the elemnts which would affect his judgment in determining the question whether he would give an extension?
A. Without question.
Q. And didn't you understand that one of the important elements in that was the question whether anybody had judgment notes?
A. That would be an important element.
Q. You, as an experienced credit man, would have regarded that as a clearly important element?
A. Yes, sir.
Q. And not the mere question of whether the bank held or a particular party held a judgment note; isn't that so?
A. Yes, sir.
Q. Isn't it true that the impression which the conversation would naturally give to Mr. Vogel was that no creditor had the opportunity of getting preference by a judgment note?
A. That might have been so.
Q. You desired to give him that impression, didn't you, Mr. Fargo?

Testimony of Chas. E. Fargo.

A. I probably did.

Q. You testified when you were on the stand before, Mr. Fargo, that you and your brothers and the other people who were concerned in this agreement with the rubber company in January were very desirous of keeping the matter secret and quiet so that other people could not find it out; that was the fact, wasn't it?

A. Yes, sir.

Q. And this arrangement about the board of directors and the giving of these judgment notes, in the way it was done, was for the purpose of keeping that matter so that people with whom you were dealing could not find it out, as you also testified on your former examination?

A. Yes, sir.

Q. Did you, when you were selling goods, referring now to the matter of your selling goods of the rubber companies, keep an entirely separate set of books after the 1st of January, 1896, in which you recorded the sales of the rubber companies' goods?

A. Yes, sir.

Q. And did you keep one set of books for that—that is, for both the rubber companies, or a separate set for each one?

A. One set of books for the rubber companies.

Q. That is, for the two rubber companies?

A. We did not have any dealings with the Candee Company at that time we sold none of the Candee Company's goods; they were United States Rubber Company's goods, as I understand.

Q. What was the general nature of that set of books—a ledger only, was it?

A. It was a cash book and I think a ledger.

Q. Did you enter on your own regular general cash book receipts of money for the goods of the rubber companies?

A. I cannot tell whether they were entered there; if they were entered there, they were separated; for instance, we sold leather and rubber goods to a man and he would remit and we would separate as far as possible the amounts of rubber and put in one book and the amount of leather on our regular book, and not put, for instance, rubber goods of the rubber company on the general cash book at all, but only leather.

Q. How did you bill these goods to your customers—bill the leather and goods of the rubber companies all in one bill?

A. No, sir; separately; we always did that.

Q. And on your general ledger did you charge against the

stomer and keep an account of the bill or only that for the ther?

A. They were charged separately.

Q. By that, you mean as two separate items?

A. As two separate items.

Q. But all entered?

A. All entered.

Q. In the general books?

A. Yes, sir.

Q. So that they both went on your general books, and the bber goods on the other set you kept?

A. Yes, sir.

Q. Where did you keep the proceeds of the rubber account—in separate bank account or deposit it generally in your bank count?

A. We deposited it generally in the bank. We did keep a parate bank account for a time, depositing so much to the edit, if I remember rightly now, of the United States Rubber mpany.

Q. During what time did you do that?

A. I think it was in February and March perhaps.

Q. Of 1896?

A. Of 1896.

Q. During only February and March?

A. No; I think that continued up to the time we proposed nding money to them. I don't remember any way about that. I now we had a separate bank account for a time, when we de osited so much money.

Q. In whose name was that account kept?

A. I think in the name of the United States Rubber Company.

Q. What bank?

A. The Commercial National of this city.

Q. At whose suggestion did you do that?

A. I do not remember.

Mr. Beale: The contract requires it; every contract did, but ey never lived up to them.

Q. That was the first time you had done that?

A. Yes, sir.

Q. Before that you had kept all the funds resulting from sales gether?

A. Yes, sir.

Q. This continued down to the time of the failure?

A. I think the money was drawn out before that.

Testimony of Chas. E. Fargo.

Q. I mean you did not keep depositing up to the time of the failure in that account?

A. There was very little rubber sales at that time. I think we did not deposit only something in two weeks or something like that. After the 1st of May there were very small sales and very little money received for the rubber companies.

Q. When you speak of depositing in that account, do you mean that you deposited the checks that you received from the customers?

A. Oh, no.

Q. But you put an equivalent amount from your own bank into that bank and deposited it there subject to the check of the rubber company?

A. Yes.

Q. Did you draw checks, or have authority to draw checks on that account?

A. I do not know; it might have been in my name or possibly my brother's as trustee for the rubber company. I think we drew checks

Q. You think it was drawn on your checks?

A. Yes.

Q. To whose order?

A. To the order of the United States Rubber Company, I presume. I do not remember the exact details, but that is as I remember it.

Q. Do you remember how much you deposited in that account?

A. Not to exceed $6,000 or $7,000. I do not remember the amount exactly, sir.

Q. Do you remember what became of the bank book? You had no other account in the Commercial National Bank, you or your house, other than this one?

A. No, sir; not at that time.

Testimony of R. R. Hotchkiss.

RUDOLPH R. HOTCHKISS, called as a witness on behalf of defendants, being first duly sworn, was examined in chief by Mr. Porter, and testified as follows:

Q. What is your full name, Mr. Hotchkiss?

A. Rudolph R. Hotchkiss.

Q. Where do you reside?

A. At 3941 Drexel boulevard, in Chicago.

Q. How long have you been residing in Chicago?

A. Since 1893, this last time I have been back.

Q. Were you ever occupied in any capacity in the wholesale store of C. H. Fargo & Co.?

A. Yes, sir; I was.

Q. About what time?

A. I think it was in September, 1893.

Q. How long were you there?

A. Between three and four weeks.

Q. What were your duties?

A. I was custodian there for the Candee Rubber Company.

Q. Were you ever occupied in the store of C. H. Fargo & Co. since that time, or upon any other occasion before or since?

A. No, sir; not in the store.

Q. You were not occupied then in that store at any time during the years 1895 or 1896?

A. No, sir; I was not.

Cross-Examination by Mr. Tenney.

Q. Where were your duties as custodian performed?

A. I think it was on the seventh and eighth floors—the two upper floors—I have forgotten now how many floors there were in that building.

Q. What were you custodian of?

A. Of the rubber goods that belonged to the Candee Rubber Company.

Q. Was a list of the goods that you were in possession of furnished you?

A. They were at the time.

Q. At the time you went in possession?

A. There were so many cases of goods, different kinds, rubbers and arctics and rubber boots.

Q. A list of them was furnished you when you were placed in possession?

A. Well, I could not answer that question now, but I had charge of all the rubber goods that were on those two floors; whenever C. H. Fargo & Co. wanted access to them, they came to me and I unlocked the doors and gave them to them and they were charged to C. H. Fargo & Co.

Q. You say they were charged to C. H. Fargo & Co.; where were they charged?

A. Well, there was a book there for that purpose.

Q. Who kept it?

Testimony of R. R. Hotchkiss.

A. I made some entries in it.

Q. What kind of a book?

A. Well, it was, I don't know—you might call it a day book.

Q. Who else made entries?

A. I do not know their names now, it was so long ago.

Q. Were they clerks of Fargo & Co.?

A. No; I kept that book, and then I had some papers, and every little while there was a gentleman of the rubber company would come here and would look at them. I don't know, it seems to me—I cannot tell his name.

Q. Who else made entries in the books besides you?

A. Well, the Candee Rubber Company's agent.

Q. He came there occasionally?

A. Yes, sir.

Q. You do not know his name?

A. No; I do not remember that, it is so long ago.

Q. Who introduced you to him as the Candee Company's agent:

A. Why, Thomas Cratty.

Q. You understood Mr. Cratty was attorney for C. H. Fargo & Co., did you not?

A. Yes, sir.

Q. It was Mr. Cratty placed you in charge there, was it not?

A. Mr. Cratty introduced me to this Candee Rubber Company's agent and gave me the custodian papers.

Q. Who did? You mean by "he," Mr. Cratty?

A. No; the Candee Company's agent.

Q. What papers did he give you?

A. They were custodian papers to show that all these goods I had charge of belonged to the Candee Rubber Company.

Q. What kind of a paper—a chattel mortgage?

A. No, sir; it was not a chattel mortgage.

Q. Something like a bill of sale, wasn't it?

A. Well, it was—not exactly a bill of sale I would not call it.

Q. Well, something in substance like a bill of sale.

A. I cannot remember now what words it did say, but it showed I had charge of those goods, to that effect.

Q. What was it—a conveyance of some kind from Fargo & Co. to the Candee Rubber Company?

A. Well, I did not see any conveyance of that kind.

Q. I am asking you about the paper you did say you had that you called the custodian paper—who signed it?

A. That was signed by—I do not know, I could not tell you

Testimony of R. R. Hotchkiss.

hat his name was, but it was signed by the Candee Rubber ompany, per so and so, agent.

Q. What did it say, do you know?

A. Well, something like—I appointed R. R. Hotchkiss cusodian of all the rubber goods on the two floors of that building.

Q. Was there anything on those two floors that you were not ustodian of?

A. The goods, no sir; I think not.

Q. Were there other goods there that belonged to the Fargo ompany?

A. These goods were all taken from the different parts of ther floors and all put up in these two floors.

Q. And whenever the Fargo people wanted some they came o you for them?

A. Yes, sir.

Q. And you delivered them to them, did you?

A. Yes, sir.

Q. And then made an entry in this book of what you delivered?

A. Yes, sir.

Q. How did you know what you delivered—did you break the ases open?

A. No, sir; I delivered nothing but full cases.

Q. How many cases did you deliver in that way?

A. I could not tell that now.

Q. That was almost a daily transaction, wasn't it, delivering oods?

A. Yes, sir.

Q. You delivered a great many cases?

A. Yes, sir.

Q. You did not handle the cases to see what was in them?

A. No, sir.

Q. You had no means of knowing the value of the goods?

A. No, sir; I did not know anything about the prices of the oods?

Q. The instructions you got in regard to this matter all ame through the agent of L. Candee & Company?

A. Yes, sir.

Q. Did I understand you that when you went away from there his arrangement stopped and the goods were returned to Fargo & Co., or did somebody else succeed you?

A. When I came away with that agent the goods were left here on the floors; I have never been in the building since and I do not know what became of them.

Testimony of R. R. Hotchkiss.

Q. Who paid you for your services?
A. The Candee Rubber Company.
Q. How much did they pay you, do you remember?
A. No; I do not remember.
Q. Who did you get the money from?
A. I do not know the name; I could not tell you.
Q. Was it this man, the same man that gave you what you called the custodian papers?
A. No, sir; some of Mr. Cratty's folks.
Q. Some of Mr. Cratty's.
A. I think that came down there, or some of the clerks—don't know those people, never did know who they were.
Q. You say it was L. Candee & Company that paid you, now you say it was some of the Crattys or Fargos which gave you the money?
A. They came down there with a receipt every Saturday night, I was there and handed me the money and I receipted for it.
Q. The receipts you gave read to the L. Candee Company, did they?
A. They were written—R. R. Hotchkiss received of the Candee Rubber Company so much, I think they paid me $3 a day, I think it was— no, it was $18 or $20 a week.
Q. How many entrances were there to these floors where the goods were stored?
A. Just the elevator, I think.
Q. No other entrances?
A. No, sir.
Q. No stairway entrances?
A. Not that I remember of; I never remember going up or down except on the elevator.
Q. You had the elevator doors on those floors locked?
A. Yes, sir; we used to sit down stairs and go up—
Q. With the men when they wanted goods, and get them out?
A. Yes, sir.
Q. You did not know, as I understand you, any of the Fargo's people or any of the people connected with L. Candee & Company?
A. Never saw them till that day that I know of.
Q. You had known Mr. Cratty for some time?
A. Yes, sir; I used to live in Peoria, and used to know Mr. Cratty there.
Q. He selected you for the work?
A. Yes, sir.

Defendants' Evidence--Testimony.

Testimony of R. R. Hotchkiss.

Q. How did you get into the store—who let you in?
A. I had a key, and there was a night watchman there all night.
Q. Did you say you were there all night?
A. No, sir; I said I had a key and there was a night watchman there all night.
Q. And you say there was no entrance to either of these floors except through the elevator?
A. To the best of my knowledge I never went in any other way except on the elevator.
Q. Was not there a stairway there to the floors?
A. There might have been from the first or second, but I never went up and never saw a stairway, or never went up except on the elevator.

Re-direct Examination by Mr. Porter.

Q. Are you perfectly certain the receipts which you gave for salary ran to the L. Candee & Company?
A. I think they did—to the best of my belief; of course it is so long ago.
Q. You are not sure but that they might have run to C. H. Fargo & Co.?
Q. To the best of my belief, they ran to the Candee Rubber Company.
Q. Wasn't it somebody connected with the store of C. H. Fargo & Co. that paid you the salary every week?
A. Well, it might have been and I not know it; you see I was not introduced to any of them there.
Q. You did not mingle with the other employes?
A. No, sir; not all the time I had a room to myself.

Re-direct Examination Continued by Mr. Beale.

Q. Do you remember seeing me in there one time, my coming in there and talking with you? I am Mr. Beale, of the counsel for the rubber companies?
A. Well, I remember that somebody came in there; I do not remember you.
Q. You do not remember that I was the one who talked to you?
A. No, sir.
Q. Do you remember the name of Charles L. Johnson?

Testimony of R. R. Hotchkiss

A. No; I do not.

Q. Rather a short man with a mustache, and no beard acting for the rubber companies?

A. I could not say that I remember him; I might if I saw him

Q. You do not remember whether it was Mr. Charles L. Johnson who actually gave you your appointment or not?

A. No, sir; I could not tell who that was.

Q. Do you remember the name of Mr. Allen as representing the rubber companies?

A. No, sir.

Q. Then, if the names were mentioned you could not recollect whether they were the ones or not?

A. No, sir.

Q. The paper which was given you or which you saw was substantially an authorization to you to act as custodian?

A. Yes.

Q. That was all?

A. Yes.

Testimony of G. E. Porter.

GILBERT E. PORTER, recalled as a witness on behalf of defendants, was examined in chief by Mr. Beale, and testified as follows:

Q. Mr. Porter, you have heretofore testified in this case about the accounts receivable of C. H. Fargo & Co., have you not?

A. Yes, sir.

Q. I think you testified about the aggregate of certain accounts as shown in the answer of the two rubber companies to the bill of complaint in this case; will you please turn to the place in the answer and state what the figures were that you testified to?

A. I testified that the aggregate accounts were figured up about the time of the answer of the rubber companies was filed by Mr. Steele, formerly employed by the Fargo Company, and he made the total aggregate of accounts $128,499, as stated in the answer of the rubber companies.

Q. Have you made any examination yourself, or caused one to be made under your direction, to verify the correctness of that statement as given in there?

A. Yes; I caused one to be made. I had the bookkeeper of Isham, Lincoln & Beale go over the list of accounts receivable as specified in the receiver's report filed in this case and he made a footing of those accounts and he arrived at the total

Testimony of G. E. Porter.

5,265.23, instead of the smaller footing as given by Mr. Steele. It is probable that Mr. Steele omitted in making up his statement several accounts that were in the hands of the Fargo Company's attorneys for collection.

Q. In the hands of the Cratty Brothers?

A. In the hands of the Cratty Brothers, yes.

Q. And some of these accounts were subsequently accounted for to Isham, Lincoln & Beale, or their proceeds were turned over to Isham, Lincoln & Beale, weren't they?

A. Yes; we received a list from Cratty Brothers of the accounts that they had there, and we also received some moneys from them as proceeds of collections. The details of these matters are already in the record, as a part of the receiver's report.

Q. Mr. Porter, had you in any way any relations to the transactions between the Candee Company and the C. H. Fargo & Co. in 1893?

A. No, sir.

Q. You had no relations in any way affecting the matters at issue in this suit, to the business between the rubber companies or either of them and the Fargo Company until about January, 1896, did you?

A. No, sir.

Q. You had personally a great deal to do with the transactions between the rubber companies and C. H. Fargo & Co. from early in January, 1896, did you not?

A. Yes, sir.

Q. You personally had a great deal to do with laying out the action to be taken by the meetings of directors and meetings of stockholders of C. H. Fargo & Co.?

A. I did.

Q. You are familiar, are you not, with the minutes as shown in the Fargo & Co. record book of the meetings of the directors and stockholders?

A. I am.

Q. Are you able to testify as to whether those minutes are or are not correct?

A. Yes, sir; I believe those minutes are all correct; I think I prepared all of them.

Q. And did the transactions and facts stated in those minutes occur at the meetings on or about the dates as mentioned in the minutes themselves?

A. They did.

Testimony of G. E. Porter.

Q. That is to say, wherever dates are given, they are corre dates?

A. Yes, sir.

Q. You were present at some of the conferences which to place between Mr. Johnson and Mr. Sadler on the one hand a the Fargos and their attorney on the other, were you not?

A. Yes, sir.

Q. As a result of those conversations, did you, either alo or acting with me, attempt the preparation of the written agr ment then intended, in Januray, 1896, to be made betw Charles L. Johnson and C. H. Fargo & Co.?

A. Yes, sir.

Q. You may state with whom you conferred about that agr ment outside of the office of Isham, Lincoln & Beale?

A. Well, I was present at one or two conferences with M Johnson, Mr. Sadler, F. M. Fargo, Charles E. Fargo, and some conferences where they were present, and E. A. Fargo w also present.

Q. Do you remember when Mr. Johnson and Mr. Sadler le Chicago?

A. I think they left Chicago on January 6, 1896.

Q. They did not remain to close up the arrangement with t Fargo Company, did they? How was the matter left—who w to close it up?

A. The matter was left to be closed up by Mr. Beale.

Q. At whose instance was this written agreement to be mad

A. The written agreement was to be made at the instance Charles E. Fargo, representing the Fargo Company; he insist that a written agreement should be made to protect the Far Company in respect to the entering of judgment notes that h been agreed to be given.

Q. The primary purpose of the written agreement was t specify definitively the contingencies under which judgment might, if necessary, be entered upon those judgment notes, w it not?

A. Yes, sir.

Q. Did not the preparation and discussion of the terms of th written agreement occupy two or three days' time, or some litt time?

A. Yes, sir, they did.

Q. Was there ultimately an agreement of the parties respec ing terms and provisions of the proposed written contract?

A. Yes; there was an agreement which was satisfactory to th

Testimony of G. E. Porter.

parties, and it was not signed when it was agreed upon because Mr. Cratty, representing the Fargo Company, insisted that there should be a statement upon the face of the notes showing that they were only to be entered subject to the terms of the agreement.

Q. A statement incorporating practically the written contract into the body of the notes?

A. Yes.

Q. What happened upon that insistence of Mr. Cratty's?

A. You would not consent to that for the reason that it might hinder the entering of judgments upon the notes.

Q. Do you remember when that point came up, about having such provision in the notes?

A. I think that did not come up until January 8th

Q. Was it as early as January 8th?

A. I will not be sure whether it was on the 8th or 9th, but I know the agreement was re-casted upon the 8th.

Q. It was within two or three days, was it, of the 6th of January, in any event?

A. Yes.

Q. And before the final actions were taken by the directors and stockholders of the Fargo Company probably?

A. Well, some preliminary meetings had been held before that.

Q. I hand you this paper and ask you to identify it if you can?

A. This is the draft of the agreement, the proposed agreement which was found satisfactory to Mr. Fargo and Mr. Cratty, but which was never signed.

Q. What is the endorsement upon the back of that?

A. The endorsement is as follows: "Draft of agreement approved by all parties but finally abandoned in favor of open arrangement. G. E. P." This endorsement is in my handwriting. I put it there at the time—at the time when it was finally arranged that there should be no agreement—and it was filed away in our office.

Q. That date is given there as January 7th?

A. Yes; it is dated January 7th, and signed "G. E. P."

Q. You can identify that particular paper, then, as the final draft and agreed draft of the proposed contract?

A. Yes, sir.

Q. Do you remember communicating with me from Mr. Cratty's office advising me that that was acceptable but that they then

Testimony of J. E. Porter.

wanted the statement in the judgment notes to which ref has been made?

A. Yes, sir.

Q. You may state what that was?

A. I was at a conference in Mr. Cratty's office with Th Cratty and Charles E. Fargo over this agreement, and at th clusion of the conference I telephoned you that it was not because Mr. Cratty insisted upon putting into the notes the ment that they should be subject to the agreement, and yo me in that case that the whole deal was off and that we not pursue the matter any further.

Q. What happened then—who came to see me presently the matter—came into our office, rather?

A. Then Mr. Fargo came to see you, I think, the next ing, and I was not present at your conference, but after he remember your telling me that he had agreed to waive any ten agreement and to place the Fargo Company entirely hands of the rubber companies—that is, place itself in hands in the sense that the judgment notes should be h them without any written agreement specifying contingencies upon which judgments should be entered.

Q. If you know the facts, please state whether the con of that written paper correctly represent the substance verbal arrangements made between Mr. Johnson, Mr. Sad the one hand and the Fargo Company on the other in th cussions which took place largely at the Auditorium Hote to January 6th?

A. Yes, sir; I think this—I think the discussions were merged in this proposed agreement.

Q. And the whole discussion was over an arrangemen stantially as set forth in this paper, was it not?

A. Yes, sir.

Q. Do you remember about the advance of the $50,000, part thereof, made to the Fargo Company—when they were

A. Yes; the first $10,000 I remember was made at the ti judgment notes were executed and delivered—that is, on ary 6, 1896. The other payments were made later, and s them passed through our office. I have forgotten the dates these later payments were made.

Q. They were all in January, 1896?

A. They were all in January, 1896, I think; I think the upon the dates specified in the minutes of the meeting

time—the dates upon which they were agreed to be made by Mr. Johnson.

Q. The written draft of the proposed contract about which you have testified also specifies dates and that specification of time was intended to be correct, was it not?

A. Yes, sir.

Q. I believe you were elected by the Fargo Company's stockholders as one of the board of directors?

A. I was.

Q. Do you know anything about the arrangements made by the Fargo Company with Mr. Johnson or with me as representing him as to the action of the board of directors, or rather as to the action of the members of the board, who were elected on my nomination, in connection with the ordinary conduct and carrying on of the business of the Fargo Company? If so, state what your knowledge was at the time?

A. The understanding with Mr. Fargo at the time was, and it was stated by you, that these directors elected at your nomination should not interfere in any way with the ordinary business of the Fargo Company.

Q. It was understood, at his request, was it not, that the Fargo brothers controlling the stock of the company would be allowed to conduct the business of the company thereafter as they had theretofore?

A. Yes.

Q. Do you know whether that arrangement was carried out and whether the five directors elected on my nomination or made acceptable to me did refrain from attempting to dictate about the business or not?

A. Yes; I know I did not interfere in any way and that the other directors in our office refrained from interfering in any way in the ordinary business of the company while they were directors. I don't think any one of these directors nominated by you was in the store of the Fargo Company after he was elected until after the judgments were entered.

Q. Except yourself?

A. Except myself. I was there once or twice to see Mr. Fargo in connection with the preparation of the agreement and the payments. I took over there some of the money that was paid in January.

Q. But you were never there in regard to the ordinary carrying on of their merchandise business?

A. No.

Testimony of E. E. Porter.

Q. What, if anything, did you have to do with the affairs of C. H. Fargo & Co. after the middle of July and the actions of the board of directors and the stockholders in their meetings, and the drafting of that paper, down to the 1st of August, 1896?

A. Nothing whatever; that is, nothing whatever with the business of the Fargo Company. I think I wrote some letters, one or two letters to Mr. Fargo in that interim; one I remember returning to him the judgment note for $45,000 which had been given to secure the indebtedness to the Candee Company which existed prior to January and which had since that time been paid; with that exception, I do not think I had anything to do.

Q. Please look at the paper handed you and I will ask you if that is a true copy of a letter which was sent about that time?

A. Yes, sir; this is a true copy of the letter I wrote to Mr. C. E. Fargo on June 3, 1896, enclosing the judgment note of $45,000, payable to L. Candee & Company. I signed that letter, and the note therein mentioned was sent with it.

Introduction of Defendant's Exhibit 10.

Mr. Beale: I will offer that in evidence here if there is no objection to it.

The Master: Said letter is received and marked "Defendants' Exhibit 10." (See p. 418.)

Q. In the negotiations and discussions in January, 1896, about this arrangement which was made between Mr. Johnson and the Fargo Company, do you remember anything about the appointment of a custodian to take possession of the goods in C. H. Fargo & Co.'s store on behalf of the rubber companies?

A. No; I never heard the matter of a custodian mentioned. The subject never came up.

Q. Do you remember whether there was at that time any discussion about concentrating the goods and locating them on any particular floor?

A. No; there was no discussion of that kind—no agreement of that kind; there was something said about keeping separate accounts of sales of consigned goods, and it was agreed upon that such accounts should be kept.

Q. Do you remember Mr. Fargo's going down to New York the latter part of July to confer with Mr. Johnson about broadening the arrangement so as to allow the Metropolitan National Bank to have some judgment notes if they would advance some money to the Fargo Company?

A. I remember that he went to New York for that purpose about the last of July or first of August, 1896.

You have no personal knowledge, I think, have you, as to arrangement that was made?

No, sir.

Did you go out of the city about that time?

Yes; I left the city on Saturday, the 1st of August, 1896, in evening. I went to Eau Claire, Wisconsin, and I got back Chicago Tuesday morning, August 4th.

Did you have any conferences with Mr. Fargo or with Mr. th or anybody else about this case August 3d?

No, sir.

Did you on the fourth?

I saw Mr. Fargo on the 4th, immediately after my return.

Without going into the matter in detail, state whether it t the substance of it that Mr. Fargo then told you he was to the Metropolitan National Bank to see about getting om from the bank?

Yes; I think he stated at that time that he intended to do I am not absolutely certain that he mentioned on Tues- morning that he intended to go to the bank, but it is my im- ssion that he did do so.

At any rate you saw him on Tuesday morning?

Yes.

On August 4th or 5th, you learned from Mr. Fargo, did you that the Fargo Company was in trouble?

Yes.

Could not meet a note that was falling due?

Yes.

Up to that time, had you received directly or indirectly any mation whatsoever that the Fargo Company was not getting g all right and succeeding fairly well with its business?

No; I had no intimation of that up to Tuesday morning, gust 4th.

You think it was on Tuesday, August 4th, that you were t informed, and not August 5th?

I think I was informed August 4th that he was expecting e difficulty in raising money, but I do not think I was in- med then that he thought he would not be able to go on or t his failure was imminent. I understood then that he might sibly arrange it.

You personally supervised the taking of judgment upon judgment notes in favor of the rubber companies, did you

Yes.

Testimony of G. E. Porter.

Q. And made the arrangement which was made with Metropolitan National Bank whereby it was agreed that rubber companies would not attempt to get ahead of the b or the bank get ahead of the rubber companies?

A. Yes. The bank could not obtain its judgment in Federal court—it would have to go to the State court—and th fore there could not be any concurrence of levy; one would h to be ahead of the other in point of time, and so that agreem was made that there should be concurrency in the executio

Q. As a matter of fact, the bank people were a little afraid the rubber companies, and the rubber companies were a li afraid of them at first, were they not?

A. I think Mr. Fellansbee was a little afraid that he m come in subsequently to the levies of the rubber compan executions.

Q. What, if any, statement, did you at any time hear m by either of the Fargos to Mr. Johnson or to Mr. Sadler o me with regard to the financial condition of the C. H. F Company?

A. I heard Mr. Charles E. Fargo make general statement the assets and the liabilities of the Fargo Company at one o conferences prior to January 6, 1896, and before it had been ranged that Mr. Johnson should procure the Fargo Company $50,000. Charles E. Fargo and F. M. Fargo were present, and Johnson, Mr. Sadler, Mr. Beale and myself. He stated th that the assets of the Fargo Company were largely in excess its liabilities and that the company would be able to pull thro its embarrassments if it had the money he wanted. He did know at that time the exact amount of the accounts receiva or he could not state approximately the total of the accounts ceivable, and he agreed to find that out, and at a subsequ conference he stated they were about $225,000.

Q. The Fargos were very enthusiastic about their "ball be ing" bicycle shoes, weren't they?

A. Yes.

Q. And said they were making a great deal of money?

A. Yes. Mr. Charles E. Fargo said that they were maki great deal of money.

Q. What was the amount they originally mentioned t would need to pull them out of their embarrassments in Ja ary, 1896?

A. The amount they first mentioned, I think, was $25,000, at a subsequent time they thought they would require $50,0

Q. Do you remember how there came to be any attention given the amount and any change made from $25,000 to $50,000?

A. No; I do not know how that came to be changed.

Q. Do you remember, Mr. Porter, whether any suggestions were made in behalf of the rubber companies, either by Mr. Johnson or by me, that it would be well for them to review the situation carefully and be dead sure that $25,000 would carry them through, because there was no use putting in $25,000 unless it would do the business and save them?

A. Yes; I remember that statement was made by Mr. Johnson at the first conference at which I was present.

Q. And it was after that that they came in subsequently, the next interview probably, and said they might need $50,000?

A. Yes.

Q. And that that would certainly do it?

A. Yes. Mr. Johnson asked Mr. Fargo at the first conference which I was present to examine his books and find out approximately what the assets and liabilities were, so that he could say definitely that the amount was sufficient—would be sufficient to pull the company through from its embarrassment.

Q. Speaking of the arrangement which was made in January, whose instance did it come about—the rubber companies or that of Mr. Fargo?

A. So far as I know, it came about at the instance of the Fargo Company. At this conference which I attended first, I think it was on the 4th of January, 1896, Mr. Fargo—Charles E. Fargo—and F. M. Fargo were in the attitude of asking Mr. Johnson for this loan of $25,000.

Q. What was the attitude of Mr. Johnson?

A. Mr. Johnson said at the beginning of the conference that the companies could not do it, and was very reluctant to loan the money.

Q. Do you remember any observation made by Mr. Johnson at that time as to the critical financial conditions generally?

A. I remember that there was a discussion of general financial conditions and an agreement that the general condition of business was deplorable.

Q. Do you remember any observation by Mr. Johnson to the effect that he would rather lose $25,000 than have the Fargo Company go to the wall?

A. Yes; I have a recollection that he said that.

Q. That was before the arrangement was consummated, was

Testimony of G. E. Porter.

A. Yes, sir; Mr. Johnson left Chicago before the details, arrangement had been consummated; he took no part in t He was finally prevailed upon by the Fargos to see that got $50,000, and then he immediately left Chicago.

Q. Some mention has been made by some of the witness the subject of a chattel mortgage; do you remember wh chattel mortgage was referred to in those discussions ear January?

A. No, I do not remember, unless it was mentione cidentally. I do not think it was at the conferences at w I was present. I do not think the matter of a chattel mor was mentioned seriously.

Q. There was no particular discussion?

A. There was no particular discussion about that.

Q. Do you remember at whose suggestion it was that change in the board of directors should be made?

A. I had an impression that it was made at Mr. Charle Fargo's suggestion, but I am not clear about it; it may h been made at Mr. Beale's suggestion.

Q. Originally, Mr. Porter, the suggestion about chang directors was that a majority of the directors should be cha so that ultimately the board as changed could take step necessary to protect the rubber companies, was it not?

A. I think that was the original suggestion.

Q. How was that changed?

A. I remember reading the case of the Illinois Steel Comp against O'Donnell, and one or two other Illinois cases, and finally determined that that would not do; that the judgm notes should be executed by the Fargo Company as it then s before any change in the board of directors took place; and t were executed by the authority of the Fargo Company and livered before the change was made in the board of directors.

Q. What, if anything, did you or anyone of the other four rectors elected on my nomination have to do on behalf of Fargo Company, and as representing it, either with the giv of the judgment notes or with the assignment of accounts the rubber companies?

A. Nothing whatever.

Q. The judgment notes were authorized and executed bef the change was made in the membership of the board, were th not?

A. Yes; and the assignment of the accounts in August w made by Charles E. Fargo as president of the company, pursu

Testimony of G. E. Porter.

the authority of a resolution of the stockholders' meeting held on August 6, 1896, as stated in the minutes of the meeting of that date, attached to the answer of the rubber companies filed in this case, and pursuant to the authority of a directors' meeting held January 6, 1896, before the change of directors.

Mr. Tenney: Where was the stockholders' meeting held?

The Witness: The stockholders' meeting held August 6, 1896, was at the office of the Fargo Company, as I recall it.

Q. Do you remember, Mr. Porter, at any time in January, 1896, or subsequently, my having any conversations with the Fargos or with Mr. Charles E. Fargo and making suggestions and cautions to them as to the way they ought to manage their business?

A. Yes.

Q. When did I make any such suggestions, and what were they, as far as you can recollect?

A. I remember that early in January, 1896, at the time or about the time that Mr. Johnson agreed to procure the advance of $50,000, that he and you both cautioned Mr. Fargo about incurring new indebtedness, and an understanding was reached that this money should be applied upon reducing the general indebtedness of the Fargo Company as it matured.

Q. In a general way our cautions were to the effect of advising them not to branch out but to conduct their own business as snugly as possible and to refrain more particularly from increasing their business, was it not?

A. Yes.

Q. Were you present at any conversations which touched upon the period of time during which it was originally contemplated that this arrangement should continue?

A. Yes.

Q. During which we should be holding judgment notes?

A. Yes; Mr. Fargo claimed that by the first of July he would be free from embarrassment, that is, he said that he expected the company would be free from embarrassment by that time and it was then expected that the agreement concerning the judgment notes should terminate.

Q. As a matter of fact, he had originally fixed an earlier date, hadn't he, but he was satisfied they would be over the temporary embarrassment by May?

A. I do not remember that.

Q. Can you recollect whether there was not some discussion

Testimony of F. E. Porter.

of making an entirely safe margin, and making it the first July?

A. I think there was—he fixed his own time. I remember there was not any disposition to shorten the time that I remember; he confidently expected to be free from embarrassment at the time on account of expected large sales of "ball-bearing" bicycle shoes, the market for those shoes being in the spring of the year.

Q. They claimed, did they not, at the time that a considerable amount of their capital was locked up in shoes which they had already manufactured?

A. Yes; he said that there was substantially no market during the winter months.

Introduction of Defendants' Exhibits 11, 12, 13, 14, 15, 16, 17 and 18

Mr. Beale: I will introduce in evidence these copies of letters from United States Rubber Company and to United States Rubber Company.

The Master: Said letters are received in evidence and marked Defendants' Exhibits 11, 12, 13, 14, 15, 16, 17 and 18 respectively. (See pp. 418 to 422.)

Cross-Examination by Mr. Tenney.

Q. That is, there would be no market during January and February?

A. Yes; that the market for those shoes began when spring opened and continued two or three months.

Q. Mr. Porter, I do not think I quite got the reason which actuated you and Mr. Beale after examining the authorities in changing this plan about the judgment notes so that they would be given by the old board and not by the new board which you then contemplated putting in office. What was that?

A. Well, the reason was that the position of the rubber companies would be better from a legal standpoint.

Q. Why?

A. Well, I do not know as I can explain that without being very prolix.

Q. Whatever the reason was, I would like to get it.

A. Well, the reason was briefly that we considered it better to have the judgment notes authorized and executed and delivered prior to any change in the board of directors.

Q. Yes; I got that; but I do not get the reason why you thought it was better; that is what I was asking for.

A. I suppose the reason in our minds was at that time that

the possible relation between the new directors and the rubber companies might somewhat impair their legal position. Testimony of G. E. Porter.

Q. Because of the application of the rule that a director of an insolvent corporation is not allowed to secure a benefit to himself or someone whom he represents? That was, in short, what you had in mind, wasn't it?

A. Something of that kind; we did not have that in mind because at that time nobody discussing this matter had any question of the solvency of the Fargo Company. Mr. Fargo claimed it to be solvent, and the rubber companies believed it to be solvent.

Q. What was the rule that you, as counsel for the rubber companies, feared might be invoked to the prejudice of your clients if those judgment notes were given by the votes of the new directors of the rubber companies put in instead of by the old directors?

A. Well, I suppose the reason was that the Fargo Company might afterwards, sometime, become insolvent—unable to continue business; then that judgments would be entered upon the judgment notes.

Q. And that they might be attacked by creditors on that ground?

A. Yes; I suppose so.

Q. The case that you looked up was that of Blair against the Illinois Steel Company?

A. Well, we looked up several cases.

Q. The cases you looked up were cases in which attacks were made by creditors upon preferences given by insolvent corporations by means of judgment notes, were they not?

A. Some of the cases were.

Q. Notably the Illinois Steel Company cases?

A. Yes; the Illinois Steel Company cases.

Mr. Beale: The undoubted reason was that I concluded it would be safer to avoid any question which might be made in the future in case of misfortune to the Fargo Company by reason of the future actions of directors nominated at the instance of the rubber companies, or of its counsel, if the judgment notes were given, when such misfortunes occurred. In other words, I might, and I was the one who decided the matter—I sought to avoid the necessity of having new directors take any kind of action whatever in any manner.

Mr. Tenney: Upon the ground that they were substantially deferring the claims of the United States Rubber Companies?

Testimony of E. E. Porter.

Mr. Beale: Precisely.

Q. You have spoken, Mr. Porter, of the assignment of the counts which was a thing done at the time of the failure resolution of the stockholders; did you attend that meeting?

A. I think I did.

Q. At whose request was it called?

A. It may have been called at my request; I think it was

Q. Who drew the resolution which the stockholders passe

A. I did.

Q. Isn't it a fact that you had the stockholders pass resolution instead of the board of directors for the very pur of obviating the point which Mr. Beale has suggested and wh influenced you in taking judgment notes by the old board and the new board?

A. That is probably one of the considerations; we did want to be open to attack by reason of any affirmative actio favor of the rubber companies.

Q. The members of the new board, aside from yourself, re had no knowledge of the deatils of what was going on, did th

A. Well, I think not.

Q. You directed the preparation, in conjunction with Beale I do not refer now simply to the time of the failure to the time this board of directors was in existence. The o members of the board deferred to you as to what should done, did they not?

A. Well, yes; I think I may say so, although in January meetings held at that time—I think Mr. Beale spoke to one or of the new directors, and I perhaps explained the matter to or two of them that he did not see.

Q. Such information as the other new directors, besides yo self, got about the situation and about those resolutions th they were called upon to pass came from either you or Mr. Bea

A. Or possibly Mr. Fargo; he was present at those meetin and there was always some discussion; matters were explain before any action was taken.

Q. During all this time you were the attorney of the rubb companies?

A. I was in the employ of the counsel of the rubber compani

Q. Well, you regarded yourself as bearing towards them yo relation as their attorney, did you not?

A. Yes; in a certain sense.

Q. Well, in a sense that you were acting for them as th attorney in these very transactions?

A. Well, I was representing counsel for the rubber companies. Testimony of G. E. Porter.
ed Mr. Beale was absent or not engaged in the matters I was
ing his place.
Q. And, as I understand it, when the question of the immi-
t failure of the Fargo Company come up, Mr. Beale was out
the city?
A. Yes.
Q. And you acted as counsel for the rubber companies in the
ter during that week?
A. Yes.
Q. On Tuesday, the 4th of August, you learned that the
rgo Company was in trouble, you say?
A. Yes.
Q. Mr. Fargo told you that he was going to get $10,000 from
e Metropolitan National Bank, did he not?
A. I am not clear that he told me that on Tuesday; my im-
ession is that he told me then that he was figuring on raising
me money—that there were some difficulties ahead.
Q. Well, it was either Tuesday or Wednesday that he told
u he was going to get $10,000 from the Metropolitan National
nk?
A. Yes.
Q. And when was it that you first arranged with Mr. Keith
t the rubber companies and the bank should prorate the
ttlement of their claims?
A. Well, it was either on Wednesday afternoon or Thursday
rning, August 5th or 6th.
Q. Now, Mr. Porter, the fact was that you did not, taking all
e circumstances into consideration, approve of Mr. Fargo's
tting that $10,000 from the bank? Isn't that a fact?
A. Well, I cannot say yes or no to that; I do not think I
approved of it.
Q. You do not think you approved of it either, do you, Mr.
rter?
A. Well, it was not a question for my approval.
Q. Isn't it a fact that you did not think it was right?
A. No; that is not a fact.
Q. Without reference to the question whether it was a ques-
n for you to express approval or disapproval, isn't it a fact
at taking into consideration the circumstances as they stood
that time, that you did not approve of Mr. Fargo's act in
tting that $10,000 from the bank?
A. No; that is not a fact.

Testimony of G. E. Porter.

Q. And you did approve of it?

A. I do not think I either approved or disapproved.

Q. In speaking of approval or disapproval, I am not asking anything you said to Mr. Fargo about it.

A. I do not think I gave the matter very much thought his standpoint at the time.

Q. What do you mean " at the time "?

A. At the time the money was obtained.

Q. Immediately upon the meeting with Mr. Keith, agreed with him, did you, that the bank and your clients your clients would prorate with the bank in the collection their claims against the Fargos?

A. Not immediately; no.

Q. Who suggested it?

A. I do not remember whether Mr. Keith suggested it was probably suggested by Mr. Follansbee or somebody in ference with Mr. Follansbee.

Q. Somebody representing the bank?

A. Yes.

Q. But you at once acceded to it?

A. Well, it was acceded to; I don't remember whether it at once or not. There was a good deal of discussion between Follansbee and myself about the matter.

Q. You knew then that included in this debt which wanted you to prorate with the debts of your clients was $10,000 which Mr. Fargo was going to get from the Metropo National Bank?

A. Yes.

Q. I do not think I quite get the consideration which you in having these judgment notes and this agreement of some months' standing to give your clients all of the out accounts of this company, to agree to prorate with the Metropolitan National Bank on its old debt of $40,000 and its debt of $10,000 in the collection of the respective claims.

A. Well, the consideration was this; it was done at Charles E. Fargo's solicitation, he representing again at time that the assets of the company were far and away than sufficient to pay the total liabilities.

Q. Well, you say the assets were far and away more th sufficient to pay the debts of your client and the debts of bank, and that of the outside creditors, then what was the cessity of making any arrangement by which you should

Q. The situation as you state it presented an absolute certainty of your both collecting your claims?

A. Well, the consideration was that Mr. Fargo requested it, and that we, relying upon the representations of Mr. Fargo, considered that there were sufficient assets to pay us both, and therefore acceded to it.

Q. Mr. Fargo had told you in the early part of the year, in telling you about his corporation's condition, that it was amply responsible; that he could conduct the business successfully and pay off all these debts before the 1st of July, and you gave him till the 1st of July as an outside date, as I understand you; that was right, was it not?

A. That was a discussion.

Q. And then when he came around and told you he was going to fail, you accepted his statement of the situation and on that alone agreed to prorate all these large claims of your client with this $50,000 claim of the Metropolitan National Bank; is that right?

A. I did not pass upon that question.

Q. Who did.

A. I think Mr. Fargo went to New York the Saturday previous and had some communication with Mr. Sadler about that.

Q. What word did you get from Mr. Sadler authorizing you to make this agreement?

A. My recollection is that we received word that he could see no objection so long as the assets were sufficient.

Q. You received that word?

A. I think so.

Q. Have you that telegram?

A. I do not know.

Q. From whom did you get that authorization?

A. I suppose from Mr. Sadler.

Q. Did you telegraph him?

A. I think it was either by a telegram or by a telephone—I am not certain about that.

Q. Do you recollect when you either telegraphed or telephoned?

A. My impression is now that it was by telephone.

Q. That is, you recollect that you did telephone him?

A. Yes, sir

Q. And you telephoned him from here to New York?

A. Yes.

Q. And told him that Mr. Fargo wished the Metropolitan

Testimony of G. E. Porter.

National Bank should share prorata with the rubber account?

A. Yes.

Q. And do you know whether Mr. Sadler had he that this debt of $40,000 to the Metropolitan Nationa just then been increased or was about to be increase the bank was going to advance Mr. Fargo?

A. I do not know.

Q. Had Mr. Sadler learned of this increase of $4 debt to the Metropolitan National Bank?

A. I think he knew that Mr. Fargo desired tha Fargo had requested that they do that, and he cons My present recollection about that is that in July, came to Mr. Beale—

Q. Excuse me—I am asking only about this propos had been made, this proposition which had been m Fargo to Mr. Keith of the Metropolitan National Ba third or fourth of August, to borrow an additional $ bank.

A. I did not state he made any such propositi date.

Q. That increase in the indebtedness is what I a of. Had Mr. Sadler, to your knowledge, been informed that that indebtedness—that increase in that indebte been made, or was to be made at the time he gave yo phonic authorization?

A. He knew that that increase was to be made; w knew it at that time or not, I do not know, but I think

Q. You think he did know it when you communica the telephone?

A. Yes; I think Mr. Fargo had gone to New York the matter previously.

Q. Did Mr. Sadler mention that, in his discussio telephone, about the increase in the debt of the Me National Bank?

A. My recollection is that Mr. Fargo told me that had consented to that and that Mr. Sadler telephoned it, confirming what Mr. Fargo had said.

Q. Now, Mr. Follansbee, you say, was very nerv the possibility of your clients getting ahead of the Me National Bank, was he?

A. Well, I do not know that he was nervous; there cussion as to the levying of executions; his executi

Testimony of G. E. Porter.

sue out of the Circuit Court, our execution out of the Federal court.

Q. You mean the State Circuit Court?

A. The State Circuit Court, and the rubber companies executions out of the Federal court. They could not be placed in the hands of the same officer for service. Therefore to have them concurrent—concurrent liens on the property—it was necessary to have some arrangement of the kind that was made.

Q. You had it then all programmed out in advance between you and Mr. Follansbee representing the bank how you would secure liens on this property, and in what court you would proceed for that purpose before you took any steps in court?

A. Oh, yes.

Q. Was that arrangement made also before you took the assignment of the accounts?

A. Well, all that arrangement was made, as I recall it, on Thursday, August 6th; the assignment of accounts was made on the same day; it was all done about the same time.

Q. Then the accounts had actually been assigned to the two rubber companies at the time that you had an agreement with Mr. Follansbee that his client should prorate in the proceeds of these accounts?

A. I do not know whether they had been assigned or not.

Q. You remember how the assignment of the accounts was made, do you?

A. I remember the circumstances.

Q. Well, when you got this assignment, you weren't doing it for the benefit of the bank?

A. No; it was for the rubber companies.

Q. And it does not show on its face any interest of the bank?

A. No.

Q. And isn't it a fact that the assignment was made transferring these accounts to the rubber companies before you had made this arrangement with Mr. Follansbee, and that you made this arrangement with him because the title to the accounts had passed to the rubber companies under the assignment?

A. No; I cannot say that this is the fact; the assignment may have been made before, and it may have been made after that written agreement between the bank and the rubber companies was entered into.

Q. Why didn't you make the assignment run to the bank as well as to the rubber companies, then?

A. It was thought desirable to have the assignment made to

Testimony of C. E. Porter.

one individual or one corporation for the purpose of handling the accounts.

Q. It was made to the two, wasn't it?

A. No; it was made to the United States Rubber Company.

Q. The only reason for that was the purpose of handling the accounts expeditiously?

A. Yes.

Q. You also participated in the discussion of that reason?

A. I do not suppose there was any discussion of that reason not after the resolution was passed authorizing the assignment to be made. I drew the assignment myself upon the ledgers, on the fly leaf of the various ledgers, and drew a written assignment on a separate paper, and it was executed that way. The consideration which moved me to have the consignment run to the rubber company was, as I have stated, I thought the accounts could be better handled if the legal title was in one corporation.

Q. The original understanding in January was that the accounts should go to the two rubber companies?

A. Yes, and the assignment provided—the assignment stated that the accounts were assigned to the United States Rubber Company as security for the indebtedness of the Fargo Company to that company.

Q. Now, why did it not also state it was security for the bank?

A. Well, the reason why it did not so state was that the resolution authorized the assignment to the United States Rubber Company and because the original agreement of the Fargo Company made in January, 1896, was that the accounts should be assigned as security for the rubber companies' indebtedness.

Q. Did you draw the resolution?

A. Yes.

Q. It was all done there at one time, wasn't it?

A. Well, I think the resolution was drawn on the 5th or 6th of August.

Q. These questions that I have put to you do not refresh your recollection at all so you can state with any more positiveness that an agreement to prorate with the bank was made after the assignment of the accounts was completed, do they?

A. No; I think not; I cannot say whether it was made before or after; my recollection is, however, that it was made after.

Q. Now, you knew at that time that the Fargo Company was

to transfer its factory—its land at Dixon, I mean—to the

Yes, sir.

And the terms on which they were going to transfer it?

Yes.

Where did you get that information?

I think I got that information from Mr. Follansbee.

And he told you of the fact that they were going to take payment of $25,000 of their debt?

Yes.

Did you ask him to make any agreement to prorate with clients in the proceeds of that?

No; there was no agreement made except that which was placed in evidence here.

And have you agreed to prorate what you got with what ot?

The agreement speaks for itself.

Well, that is the fact of it; that is, the extent of the fact. ll that took place between you?

No; my understanding of the fact was that we should pro upon everything.

That is, that he should divide anything he got out of that l and you should divide anything you got out of the accounts cvies?

That is my recollection of the effect of the agreement.

Why was it that nothing was put in any of these writings?

I think it is in that writing.

You think so?

I have not looked at that agreement for several months, my impression is that it provides for a division of both the ds as well as the proceeds of the stock.

Your understanding of the transaction was that by that bank's debt was reduced to $25,000, was it not?

Yes.

But I understand you to say you had an interview with Keith on Tuesday, the 4th of August?

A. No; on Wednesday.

Q. What time on Wednesday?

A. I think on the afternoon of Wednesday; in fact I am quite re it was in the afternoon.

Q. What did you tell Mr. Keith at that interview—or, where as it, in the first place?

A. At our office.

Testimony of J. E. Porter.

Q. Had you sent for Mr. Keith?

A. No; Mr. Follansbee and Mr. Keith came together to our office and I think Mr. Jones, an employe of the Metropolitan National Bank, came also; that was in the afternoon of Wednesday, the 5th.

Q. Had Mr. Fargo before that time told you he wanted the Metropolitan National Bank let in on a level with your clients?

A. Yes.

Q. Did you tell him you would do so?

A. Well, I had had this communication from Mr. Sadler, who confirmed what Mr. Fargo had said; and I presume Mr. Fargo then saw Mr. Keith and that was the occasion of Mr. Keith's coming up to the office.

Q. Then what took place between you and Mr. Keith?

A. We had a general discussion as to what was to be done.

Q. What was the substance of that, as near as you can give it—the bank did not then have the judgment notes, did it?

A. No.

Q. And so it was necessary to have the board of directors authorize the giving of judgment notes, was it not?

A. Yes, sir.

Q. That matter was discussed?

A. That was discussed.

Q. You told Mr. Keith that the board of directors was right there handy in the office and could pass the resolution?

A. No; I think we told him we could have a meeting in the office, that the directors were all at hand; and there was some discussion as to the manner and method of executing the judgment notes.

Q. I wish you would state, as nearly as you can, fully, what took place, what the discussion was afterwards, or what was suggested?

A. Well, there was some discussion, I remember, as to whether the rubber companies' judgments should be entered in the Federal court or State court; that was a matter that was discussed.

Q. What was said about that? Did anybody object to it?

A. I don't know that anybody contended for it, but I think that I took the position that they should be entered in the Federal court, and that was finally arranged.

Q. Why was it, do you know, that you suggested that it should be entered in the Federal court?

Well, on the general principle that the Federal court was ter court to be in. Testimony of G. E. Porter.

Who was it that made the suggestion that creditors could eplevin from the United States marshal?

I do not know that anybody made that suggestion.

That was a factor in the consideration of the question of g the United States marshal put in possession, wasn't it?

I do not know that it was. That may have been talked of.

The arrangement as to the entering of judgment and levy f execution was that Mr. Follansbee should not enter his ment in the State court before the two rubber companies ime to enter their judgments in the Federal court and get ficer in possession, wasn't it?

Yes; the arrangement was that the marshal should take ession of the property under the Federal court executions.

I understand that this interview on the afternoon of esday in which you say you were discussing the matter of ing judgments was the first time you had seen Mr. Keith one connected with the bank with reference to this matter?

Yes; I think that was the first I saw Mr. Keith.

You heard Mr. Keith's testimony the other day, did you?

Yes.

He at first stated that the interview was on Monday; he mistaken in that?

He was mistaken about that, because I was out of the city onday.

Beale: Mr. Porter, do you desire to correct one statement?

Yes; on reading over my testimony I find that I stated he stockholders' meeting of C. H. Fargo & Co. held August as held at the office of the company; but I now think that held at the office of Isham, Lincoln & Beale; I am sitive, because the minutes state that it was held at the of the company, but I rather think that is an inadvertence ting up the minutes.

A. COOPER, called as a witness on behalf of the two rub companies, being first duly sworn, was examined in chief Mr. Beale, and testified as follows: Testimony of J. A. Cooper.

What is your full name?

John A. Cooper.

Where is your place of residence?

mony of Cooper.

A. In Chicago.

Q. And your occupation?

A. Public accountant.

Q. Have you made any examination of the books of C. H. Fargo & Co.?

A. Yes, sir.

Q. At whose instance did you first examine the books?

A. Newman, Northrup & Levinson.

Q. And subsequently you examined them at the instance of Isham, Lincoln & Beale, did you?

A. Yes, sir.

Q. Have you examined those particularly with reference to the ascertainment of the indebtedness of that company on January 6, 1896, and the indebtedness of the company on August 6, 1896, at the time of the failure, and with the changes in the indebtedness that took place between those dates?

A. Yes, sir.

Q. State the total indebtedness of C. H. Fargo & Co. (exclusive of the indebtedness to the two rubber companies and the Metropolitan National Bank) as it appears from the books of that company on January 6, 1896, and before that company received the advance of $50,000 from L. Candee & Company?

A. On January 6, 1896, the amount of indebtedness was two hundred and ten thousand two hundred and sixteen dollars and twenty cents ($210,216.20).

Q. The amount you have given, as I understand you, does not include any portion of the $50,000 advanced by L. Candee & Company on January 6th and subsequent to it?

A. No, sir.

Q. What was the total indebtedness of C. H. Fargo & Co. at the time the judgments were entered against it, August 6, 1896?

A. One hundred and forty-six thousand five hundred and thirty-one dollars and twenty-five cents ($146,531.25).

Q. For convenience in computation, what does that show then, in the way of decrease of indebtedness?

A. A decrease of sixty-seven thousand five hundred and twenty-five dollars and twenty two cents ($67,525.22).

Q. What was the total amount of liabilities for purchases and other items incurred by C. H. Fargo & Co. between January 6 and August 6, 1896?

A. The liabilities incurred between the two dates, January 6 and August 6, 1896, were two hundred and forty-six thousand six hundred and sixty dollars and fifty-four cents ($246,660.54).

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It is hereby stipulated that the $146,541.25 stated in the testimo
of J. A. Cooper to be the total indebtedness of C. H Fargo & C
on August 6, 1896, as shown upon the company's books, is (owing
an error on the Fargo ledger in the account of the Laubeau Leath
Company too large by $3,840.27, and therefore should have be
stated as $142,690.98.

Q. And during the same period of time what were the pay-
ents—what was the amount of moneys paid out, appearing by
e books to have been paid out by C. H. Fargo & Co.?

A. Three hundred and ten thousand three hundred and forty-
e dollars and forty-nine cents ($310,345.49).

Q. Can you give any approximation of the number of accounts
the books of C. H. Fargo & Co., whether their dealings were
ensive with a large number of people, or whether they were
mparatively few?

A. They were extensive.

Q. Embraced a large number of accounts?

A. Yes, sir.

Q. Did you make any examination, Mr. Cooper, to ascertain
at number of creditors—what amount of creditors were paid
in full between those two dates, if any?

Mr. Newman: We object on the ground that it is not material
ertinent to any issue in this cause.

Mr. Beale: The point of that, Mr. Master, is merely as bear-
on the question of good faith, showing what their exact
nsactions were. Whether it bears on the legal rights is
ther proposition.

Mr. Smith: The inference might be drawn both ways.

Mr. Beale: I haven't asked him any question yet, only whether
made an examination.

A. Not specifically as to that feature of the case.

Q. Would you at this moment be able to testify on that
ture of the case as to the number of creditors paid off and the
unt paid off?

A. No, sir.

Cross Examination by Mr. Newman.

Q. From your examination of the books, Mr. Cooper, could
determine whether all the liabilities of the Fargo Company
ared upon their books as of January 6, 1896, in definite
m, so that you could testify accurately as to the total amount
the claims against the company?

A. There was nothing by which I could tell that every claim
on the books; every liability was on the books.

Q. Of course, they might have owed money that did not ap-
on the books?

A. Yes, sir.

Q. You have stated that the total liabilities as shown by the

Testimony of J. A. Cooper.

books of the company on January 6, 1896, was $210,216.29, b that include what the Fargo Company owed the two rubber c panies and the bank?

A. No, sir.

Q. Is the figure $210,216.29 exclusive of what the Fargo C pany owed the two rubber companies and the Metropol National Bank?

A. Yes, sir.

Q. What amount did the Fargo Company on January 6, owe the two rubber companies and the Metropolitan Nati Bank?

A. I did not examine as to that point.

Q. You have said that from your examination of the book the Fargo Company it appears that on August 6, 1896, the Fa Company owed $146,531.25; does that include what the Fa Company owed the two rubber companies and the Metropol National Bank on August 6, 1896?

A. No, sir.

Q. Is that amount exclusive of what the Fargo Comp owed the two rubber companies and the Metropolitan Nati Bank on August 6, 1896?

A. Yes, sir.

Q. As shown by the books?

A. Yes, sir.

Q. Do you know whether the $10,000 which the Fargo tained from the Metropolitan National Bank on or about Aug 4, 5 or 6, 1896, appears on the books of the company?

A. I do not know, sir.

Q. Have you any means of determining whether all the bilities of the Fargo Company appear on the books of the c pany as of August 6, 1896?

A. No, sir.

Q. Are you aware of the fact that the claims proved up the receiver exclusive of the claims of the Metropolitan Nati Bank and the two rubber companies amount to one hu dred and seventy-two thousand nine hundred and forty- dollars and forty-five cents ($172,942.45)?

A. The whole of the claims, exclusive of the rubber compa and the bank?

Q. Yes.

A. They do not agree with my figures.

Q. The master's report shows, Mr. Cooper, that the to claims proved up with him, or filed with him, amount to $1

g 45, as appears by the master's record which I now hand you for examination?

A. Yes, sir.

Q. The figures which I have given you as representing the claims proved up with the master are correct, as shown by the master's books?

A. Yes; that is the amount you have mentioned; that is the amount that you have read, but it does not agree with my figures.

Q. Have you examined the list of claims proved up with the master, and verified, or attempted to verify, them with the books of the Fargo Company?

A. No, sir.

Q. Then you do not know whether all of the indebtedness of the Fargo Company appears on the books of that company as of August 6, 1896?

A. No, sir.

Q. In fact, Mr. Cooper, you are only giving us a sort of skeleton of what the books of the Fargo Company, as kept by the Fargos, show?

A. I have given you the statements.

Q. Read the question. (Question read.)

A. Yes, sir; the summary of the accounts.

Q. You have no means of determining whether the books are or are not correct?

A. No, sir.

Q. How do you figure the total indebtedness of the Fargo indebtedness on August 6, 1896, exclusive of the two rubber companies and the Metropolitan National Bank, is only $146,531.25?

A. Based on the figures of the books as I found them, taking them item by item.

Q. Have you a list of the accounts which appear on the books of the Fargo Company, the sum total of which amount to $146,531.25?

A. Yes, sir.

Q. Will you please compare that list with the proofs of account filed with the master?

A. I have done so.

Q. Now, what accounts appear in the master's list that do not appear in yours as taken from the books of the Fargo Company?

A. N. L. Millard.

Q. What amount?

Testimony of J. A. Cooper.

A. Ledger account sixty-two dollars and seven cents ($62.07).

Q. The account as filed with the master?

A. No, sir. It is the account on the ledger, but which is included in the list of the master's printed report.

Q. You do not understand my question. Mr. Cooper, there is a difference, as taken off the Fargo Company books by you and the master's lists, a difference in amount, not necessarily in claims. In amount the total of your list differs from the master's list?

A. Yes, sir.

Q. Wherein does that difference consist?

A. In about sixteen accounts that are not included in my list of accounts, but in the miscellaneous accounts that are on the ledger.

Q. What are those accounts?

A. N. L. Millard & Co. is one.

Q. What is that for?

A. I do not know, sir.

Q. If it is on the ledger why didn't you include it?

A. I have included it in the miscellaneous. It is not an authorized claim according to the attorneys, Isham, Lincoln & Beale.

Q. Then your list is made up partly of what Messrs. Isham, Lincoln & Beale told you and partly of what is on the books of the Fargo Company?

A. It is made up entirely of everything on the ledger. I have got them classified.

Q. You now say that the Millard account appears on the ledger, but you did not include it in your list of liabilities?

A. The list of claims. The list of liabilities is another thing; the general list of liabilities outside of the claims includes the few accounts that were not authorized amongst the claims.

Q. What is the difference between a liability and a claim?

A. They are all liabilities; they are not all claims.

Q. What is the total amount of the accounts as you found them on the ledger, whether they had been filed with the receiver or not filed with him?

A. I have given you the amount, $146,531.25. That includes the claims.

Q. Well, Mr. Cooper, please get out of your mind any distinction between claims and liabilities; that is a bookkeeper's distinction—we care nothing about it in this investigation. What we want now is an answer to this question: What are the

total liabilities appearing on the books of the Fargo Company on January 6, 1896?

A. Exclusive of the rubber companies and the bank?

Q. Yes.

A. $210,216.20.

Q. That includes obligations of every kind and character appearing on the books?

A. Yes, sir.

Q. What were the total liabilities of every kind and character appearing on the books of the Fargo Company on August 6, 1896, exclusive of the two rubber companies and the bank?

A. It is $146,531.25.

Q. Now, Mr. Cooper, I hand you a list of claims prepared by the master, which have been filed with him, either as receiver or as master, the total amount of which figure up $172,942.45, which purport to be the liabilities of the Fargo Company on August 6, 1896. You, now, in your testimony, tell us that the books of the Fargo Company show a total liability on August 6, 1896, of only $146,531.25?

A. Yes, sir.

Q. Now, please point out to us what liabilities appear in the master's schedule or list which do not appear in yours, giving us the names of the parties and the amounts?

A. I can give you the names of the parties and the amount that I find on the ledger account—the amounts of the claims would have to be taken from that list. There are some sixteen accounts that are not included in the claim list.

Q. Do not talk of it in that way; tell the fact about it. I mean when you refer to the list, tell what you mean, do not characterize it?

A. There are some sixteen accounts included in my figures that are not embraced in the claims.

Q. What do you mean " in the claims "?

A. In the master's list—shown on the master's list.

Q. What do you mean by that? It must be just the other way, Mr. Cooper; the total of the master's list is larger than yours. How can it be that some claims are omitted in the master's list and included in yours?

A. The amount as I have reported from the ledger is the total, a difference in nearly every case from the report as shown from the master's book.

Q. As to amounts?

A. Yes. That will account for the difference.

Testimony of A. A. Cooper.

Q. What is the total amount of the sixteen claims which you say were not filed with the master and which appear on the Fargo Company's books?

A. There are sixteen accounts on the books that do not appear in the master's list of those that paid the assessment.

Q. Banish that from your mind, Mr. Cooper. Mr. Cooper, does the figure $146,531.25 include every obligation of every kind and character appearing on the books of the Fargo Company as of August 6, 1896, or thereabouts?

A. It does includes everything except the indebtedness to the two rubber companies and the Metropolitan National Bank.

Q. Have you examined the list of claims filed with the master?

A. Yes, sir.

Q. Have you compared that list with the liabilities as you found them on the Fargo Company's books?

A. Yes, sir.

Q. Now, point out to us the differences.

A. The principal differences—one of the principal differences is claim 106, J. Walter Thompson & Co. The ledger account is $13,757.34; the filed claim is $22,452.68. Do you want me to enumerate them?

Q. Yes.

A. The American Oak Leather Company—the amount on the ledger is $12,829.56; the claim filed, $13,160.

Q. Let me ask you right in connection with that, were not all goods for which the Fargo Company was indebted to the American Oak Leather Company sold and delivered after January 1, 1896?

A. Yes, sir.

Q. Wasn t the bulk of it sold late in the season?

A. I can't say from my figures here.

Q. Go on answering the other question, Mr. Cooper.

A. Claim number 153—the R. G. Gunning account—on the ledger is $100; claim, $617.14. The Hurley Printing Company, claim 158, ledger account $360.40; claim, $635.30. The Kluefer Paper Box Company, claim 160—

Q. The other differences are of the same character?

A. All of the same nature.

Q. Are there any liabilities or claims that were filed with the master which do not appear on the ledger?

A. Yes, sir.

Q. Name those, please, and the amount?

A. Some thirty of them.

Q. How many altogether?
A. About thirty, I should think.
Q. Just count them up—be accurate about it?
A. Twenty-seven claims.
Q. What is the total amount of those twenty-seven claims?
A. About $4,400.
Q. Have you got the claim of the Metropolitan National Bank your list as you took it from the ledger August 6, 1896?
A. No, sir; I did not take the Metropolitan National Bank count.
Q. And you have no present recollection what the account on Fargo books shows that claim to be?
A. No.
Q. Mr. Cooper, did you make any examination of the assets the Fargo Company as of January 6, 1896, or as of August 6, , or as of any other time?
A. No, sir.
Q. So that your figures do not show the net increase or de- ase of assets or the true condition of the Fargo Company, her of January 6, 1896, or of August 6, 1896?
A. No, sir.
Q. Will you please ascertain what the books of the company w was owing to the two rubber companies and the Metro- itan National Bank on January 6, 1896, and what was owing se three concerns when the Fargo Company failed on August 1896?
A. Yes, sir.
Q. Do you know anything about the claims of the two rubber panies and the bank as they were in January and August, ?
A. No; sir; not sufficiently well to testify.
Q. Are you aware of the fact that the claims of the two rub- companies and the bank were increased between January 1896, and August 6, 1896?
A. No, sir.
Q. You are not aware of the fact?
A. No, sir.
Q. You know nothing about it?
A. No, sir.
Q. Haven't you somewhere prepared a list showing when the rchandise for which claims have been filed with the master s sold and delivered to the Fargo Company?
A. I made an examination of that kind for you, Mr. Newman.

Testimony of J. A. Cooper.

Q. Have you got the papers with you?

A. No.

Q. Can you produce them?

A. I can produce a copy of it in my office, I guess. You ha the original.

Q. Will you kindly get that list this afternoon, Mr. Coop and come back?

A. Yes, sir.

Q. Have you examined the books of the Fargo Company w respect to the outstanding accounts so as to understand th general condition—the outstanding accounts that were owing the Fargo Company by their customers?

A. No, sir.

Re-direct Examination by Mr. Beale

Q. You were employed by us, were you not, to examine in a few specific things only?

A. Yes, sir.

Q. Not to make any general examination of the books?

A. No, sir.

Q. We asked you first, did we not, to ascertain the gene showing concerning which you have testified, of the indebt ness of the Fargo Company? As to the accounts of the rail companies and the Metropolitan Bank I told you you need n pay any attention to those?

A. Yes.

Q. And consequently you paid no attention to those accoun

A. No, sir.

Q. Then we asked you to make an examination of the bo for the second purpose of verifying the claims here before t master—verifying the amounts of the claims here?

A. Yes, sir.

Q. We gave you, for that purpose, but not for the other one list of claims?

A. Yes, sir.

Q. So that in making your examination as to the total li bilities you paid no attention to the claims proved before t master, or had no list to work with—you worked solely from t books?

A. I worked solely from the books, yes, sir.

Q. Will you please turn to your list and see what the cla

Mr. J. Mallers shows there on the books as compared with the st before the master? Testimony of J. A. Cooper.

A. The Mallers claim is not in this book at all, for the simple ason there is no account on the ledger, and it is not amongst e claims that you gave me.

Q. It is not among the claims that we gave you?

A. No, sir.

Q. Did we not say to you that when we gave you the list of ims to be verified, we gave you the claims as they stood be- e the master which were entitled to share in the distribution, ving paid their assessments?

A. Yes, sir.

Q. But we did not give you at all for verification the claims ich had not paid their assessments?

A. No, sir.

Q. In saying that there were quite a number of claims—I nk you said about thirty—in the master's list which were not the books of the company, you mean, then, in the list of ims as given to you, or in the aggregate list as filed with the ster?

A. No; as given to me.

Q. In the list as given to you?

A. Yes, sir.

Q. What is the nature of those claims generally?

A. Appear to be wages.

Q. Wages claims?

A. Yes, sir.

Q. Is there any exception to that as far as you can see?

A. Well, the principal one is the League of American Wheel- en. Bulletin and Good Roads. It is not on the ledger. It is advertising account, $462.10. Chicago and Eastern Illinois ight account, $20.

Q. Are you able to give any explanation as to why they were t on the books?

A. It is not customary to put the freight account on the book a general thing.

Q. There is nothing extraordinary about the fact that these counts are not on our books?

A. No; except in one or two cases. The Regent Manufactur- g Company, which I could not trace, $233.87, and George M. llman Company, $225.28. I should say that the prinicpal ge account was that of E. A. Fargo, $1,973.33.

Q. What other large account is there—what other large de-

Testimony of J. A. Cooper.

mand for wages shown in the list of claims filed with the ma
besides the one of E. A. Fargo?

A. There is the account of Gus. Weimerstron, $655.

Q. Are there any other large amounts in there?

A. Wachusett Mills, $175.

Q. Well, the others are all smaller than that?

A. Yes, sir.

Q. What is the general condition of the Fargo books and
way they were kept? Do they show any irregularities or
shod bookkeeping, or any exceptional omission of accou
anything of that kind?

A. That is a line of investigation that I did not follow.

Q. I mean so far as you had occasion to see?

A. Apparently they were kept very properly, except t
were some books missing that I could not examine.

Q. What, for instance?

A. There is one of the ledgers missing, inventory books
trial balance records. None of those appear amongst the b
They are essential to a thorough examination.

Q. Well, were they indispensable to an examination of
things as you have sought to ascertain?

A. No; no.

Q. But to a thorough examination of the affairs of the
pany?

A. For an adjustment of the accounts they would be n
sary to determine the assets and liabilities.

Q. Are you able to state in general an explanation w
will account for the differences in amount between the c
as shown by the books of the company and the claims a
sented to the master?

A. The difference would be largely due to running acco

Q. Assuming, of course, that the claims as presente
correct?

A. Yes, sir.

Re-direct Examination by Mr. Manning.

Q. Mr. Cooper, during what time was the ledger kept tha
say is missing?

A. It is what we call the general 1893 ledger; it appertai
a period between 1893 and 1896.

Q. In your examination did you find any inventory book

A. Not one, sir.

Q. No accoun
ou examined—t
and at the part
A. No, sir.
Q. Would the
ition of the firm
A. At that pa
Q. Yes.
A. It would
aken at that da
Q. Do you k
the time they w
A. I noticed
xactly.
Mr. Beale: T
The Witness
ount with an

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It is hereby stipulated and agreed between all the parties in int
est in this cause that the books referred to in the testimony of J
A. Cooper, at pages 296, 297 and 299, as missing, were not a
the books taken from the store of C. H. Fargo & Co. at the time
the failure, by the Rubber Companies, or by their solicitors. Ish
Lincoln & Beale; that diligent search has been made for said bo
and that said books have never come into the possession of the R
Companies or of Isham, Lincoln & Beale, or of the receiver.

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Testimony of J. A. Cooper.

. No account of merchandise is shown on any of the books examined—that is, no inventory of the merchandise then on nd at the particular time?

. No, sir.

. Would there be any way to determine the financial con- on of the firm without an inventory being taken of the assets?

. At that particular period, January 6th?

. Yes.

. It would not be very likely there would be an inventory en at that date.

. Do you know when the firm took their inventories during time they were in business—annually or semi annually?

. I noticed that on the ledger, but I could not recall the date tly.

r. Beale: The books show that they did take inventories?

he Witness: There was a reopening of the merchandise ac- nt with an inventory item. Of course, what it was based on uld not say.

But the inventory books by which that account was car- to the merchandise account in the ledger were not produced— did not see them?

No, sir.

r. Newman: They are not among the books in the posses- of the receiver?

he Witness: Well, I don't know what you call in the pos- ion of the receiver. He may have charge of the city ware- se. All the books are there. The fact that the gentleman r. Beale's office could not locate the book indicates that ably he did not recognize the form of the book, if it took her form. It may not be the same form as the book in use e present time.

During your examination, did you find whether at any time ng the year prior to August 6 there were any monthly trial nces made by the firm of C. H. Fargo & Co.?

I have the second half of one of the trial balance books. first half isn't there.

. Newman: What year?

e Witness: 1896.

(Continuing.) I mean to say the first half of the alpha- al order. There is a ledger A to K, which is one trial bal- book. There is a ledger L to Z, which is another. The r L to Z trial balance record book, about that size (indicat- is there, but the other half, A to K, is not there.

Testimony of J. A. Cooper.

Q. Then what you did have is complete?
A. It did not give me any information at all.
Mr. Beale: Does A to K cover the period from 1893 to 1896?
The Witness: It was the general ledger.
Mr. Beale: What was this?
The Witness: It was a trial balance book.
Mr. Beale: Two volumes, and the first is missing?
The Witness: Yes, sir.
Mr. Beale: Assuming that the accounts of the various creditors are correctly shown in the ledger which you had for examination, the absence of this prior ledger cut no particular figure in looking into the accounts, did it?
The Witness: Not as to the status on January 6 or August 6.
Mr. Beale: That is what I mean.
Mr. Manning: If correctly transcribed?
The Witness: Yes, sir.
Mr. Beale: Assuming that they were correct in a subsequent book?
The Witness: Probably the question would be better answered by this, that the ledger in use began January 6.
Mr. Manning: 1896?
The Witness: Yes, sir. And there are some accounts in there transferred from this old ledger that I cannot identify.
Mr. Manning: Identify whether they are correct or not?
The Witness: No, sir.
Mr. Manning: The one preceding January 6, 1896, is the one that is missing?
The Witness: Yes, sir.
Mr. Manning: The general ledger, not the eastern or customers'?
The Witness: Yes, sir.

By Mr. Beale.

Q. What does the general ledger contain?
A. The office accounts and internal accounts.
Q. What do you mean by that?
A. Assets and liabilities.
Q. Statement of accounts with their creditors?
A. Yes, sir.
Q. Any merchandise accounts in here?
A. I should think there were.

What search has been made to find that, do you know, Mr. per? Testimony of J. A. Cooper

No. sir; I do not. I rather judge from the fact that it was ifferent form of book that the parties that looked for it did not nify it.

ELL McKEEVER, called as a witness on behalf of defend- nts, being first duly sworn, was examined in chief by Mr. eale, and testified as follows: Testimony of Buell McKeever.

Please state your name, residence and occupation, Mr. Keever?

Buell McKeever; 3900 Lake avenue; lawyer.

You are connected with the law firm of Isham, Lincoln & le, are you not?

As a law clerk.

And have been for how long?

Past four years.

Are you the Buell McKeever who became secretary of the . Fargo Company in the early part of January, 1896?

I am.

I hand you the minute book of the C. H. Fargo Company, rwise called the secretary's reports of C. H. Fargo & Co., ago, marked on the outside "record," and ask you to turn ne minutes of the meetings from the time you became a tor of the company, and state whether you are able to identify e minutes, whether the minutes are signed by you, and her they are correct?

The first was of date January 9, 1896. I was present at meeting and signed at the end of minutes as they appear is book, pages 34 and 35.

Did you understand the minutes as you signed them to be ct?

I did.

And do you so understand them now?

I do.

Proceed, Mr. McKeever with the other.

The other meeting was held on August 5, 1896. Both of meetings are meetings of the board of directors of C. H. o & Co. I was not present at this meeting, but I subse- ntly wrote and signed the following: "We and each of us by consent to the foregoing meeting and to the proceedings

Testimony of Buell McKeever.

taken therein. Buell McKeever." Those are the only two meetings of the board of directors which I ever attended, or of which I have any knowledge.

Q. From the time you became a director, you were also treasurer, were you not?

A. Yes, sir; I was.

Q. What, if anything, after the time that you became a director and secretary and treasurer, did you have to do with the affairs of the Fargo Company and its business matters?

A. Absolutely nothing apart from these two meetings—attending at the first meeting and signing the minutes of the second.

Q. Your attendance at the meeting and your concurring in the meeting, as if in attendance, were all you had to do with the affairs of the company in any way?

A. Yes, sir.

Q. Do you know why you were elected a director and secretary and treasurer, or was any purpose stated to you at the time?

(Objected to by Mr. Newman.)

The Master: Let the witness answer subject to objection.

A. I do not think the purpose was stated to me at the time. It was stated to me immediately after the first meeting, I think, by Mr. Porter, who said that it was at the request of Mr. Beale. I do not recall that any further explanation was made to me at the time,

Q. When you say that you were not informed at the time, you mean prior to your election, or concurrently with it?

A. Yes.

Q. But you did understand, in a general way, did you not, Mr. McKeever, or were given to understand after your election, that you were elected a director and had taken the place of a director and also of secretary and treasurer to see to it that the Fargo Company carried out a certain agreement which it had made not to prefer certain other creditors?

A. Yes.

Q. There was no further purpose—special purpose—to be served by you as a director in there than to see that the Fargo Company kept an agreement which I said had been made?

A. There was no other purpose than that.

Q. What was the arrangement about the treasurership work?

A. I believe it was stated that some one should do the active work in that position, and that I should have nothing to do with

Defendants' Evidence—Testimony.

of in any way interfere with the business of C. H. Fargo & Testimony of Buell McKeever.

Q. You did have nothing to do with the treasury work any ore than any other party?
A. Absolutely nothing at all to do with it.
Q. Were you ever called upon or requested in any way by any the Fargos or any of the Fargo Company to do anything?
A. During this period?
Q. Yes.
A. No, sir.
Q. Were you ever in the store?
A. No, sir; I do not think that I have ever during this period en in C. H. Fargo & Co.'s store.

Cross-Examination by Mr. Manning.

Q. Does that record book show the by-laws of the company?
A. Yes, sir; it does.
Q. What is the first article there with reference to the di-ctors?
A. Page 7, by-laws of C. H. Fargo & Co., adopted by the board directors at a meeting held on the 31st day of January, 1890. Article 1. The affairs of the company shall be managed by a ard of directors composed of seven members, who shall hold eir office for one year, or until their successors shall be ected."
Q. Was that by-law in existence when you were elected a rector?
A. It was.
Q. You were one of the seven members of the board of di-ctors, then, were you?
A. I was.
Q. And you say you took no part in the management of the airs of the business?
A. None at all.
Q. Why not?
A. Because it was not my business to.
Q. Did you know that you were required to take part in it by e terms of the by-laws of the company?
A. I did not read the by-laws at the time.
Q. Did you know that the statute of Illinois imposes a duty on any person acting as a director of a corporation?
A. I was not aware of that at the time.

Testimony of Buell McKeever.

Q. When did you become advised of that fact?

A. I think recently in looking up the law on certain le points I had occasion to go into that; I looked the thing up qu thoroughly in connection with a case.

Q. You are a practicing attorney of the Chicago bar, are y not?

A. I am now.

Q. When were you admitted to the bar?

A. I was admitted in June, 1896—June or July.

Q. That is a few months after you were elected a directo this corporation?

A. About six months.

Q. And you have been a practicing attorney of the bar ev since, have you not?

A. I have.

Q. Who were the other directors elected at the time you we

A. George C. Madison, Tiffany Blake, Gilbert E. Porter a Frederick B. Fuller.

Q. Is Frederick B. Fuller a practicing attorney of the Chica bar?

A. He is dead.

Q. Was he a practicing attorney of the Chicago bar?

A. I believe he was.

Q. In January, 1896?

A. I think so. I have not seen his certificate, but I think s

Q. Was Gilbert E. Porter a practicing attorney of the Chica bar in January, 1896?

A. I think so.

Q. When was he admitted to the bar?

A. I cannot tell.

Q. Some time prior to January, 1896?

A. I presume so. I have not any knowledge on the questi

Q. Was Tiffany Blake a practicing attorney of the Chica bar in January, 1896?

A. I think so.

Q. At the time he was elected a director?

A. I think so.

Q. What was the business of George C. Madison?

A. He was cashier of the firm of Isham, Lincoln & Beale

Q. Was he not also a bookkeeper?

A. Yes.

Q. Then the five directors elected in January, 1896, consis of four attorneys of the Chicago bar and one bookkeeper?

A. Yes; I think they were—well, no, I was not at that time practicing lawyer.

Q. What was the amount of the assets of the Fargo Company the time you were elected a director?

A. I cannot answer that question.

Q. Did you make any investigation as to whether or not the rgo Company had any assets at that time?

A. None at all.

Q. How much were the liabilities of the Fargo Company at the e you were elected a director?

A. I do not know.

Q. Did you make any examination to ascertain?

A. I did not.

Q. You say you were elected treasurer?

A. I was.

Q. Did any funds come into your hands as treasurer?

A. None.

Q. Did you ever have any funds in your hands as treasurer?

A. None at all.

Q. Did they have any treasurer after you were elected?

A. I cannot tell apart from my—

Q. Did you ever take any action as to who should act as as- tant treasurer?

A. I never did.

Q. Who was the treasurer before you were elected? Can't you without looking at the book?

A. No, sir.

Q. Did you ever inquire who was your predecessor?

A. No, sir.

Q. Well, now, look at the book and see if you can tell who s treasurer before you were elected treasurer?

A. The record shows that on April 14, 1892, at a meeting of e board of directors Frank M. Fargo was elected treasurer.

Q. And do they show anyone else elected treasurer up to the e you were elected?

A. No, sir.

Q. Do you know Frank M. Fargo?

A. I think I met him once, but I should not know him again I saw him.

Q. Did you ever ask him to turn over to you the funds of the rgo Company after you were elected treasurer?

A. No, sir.

Testimony of Buell McKeever.

Q. Do you know who acted as treasurer after you were elected treasurer?

A. No, sir; I do not.

Q. Was there anything discussed as to who should act as treasurer?

A. I think there was some discussion, but I do not recall the details. I do not remember any names.

Q. Is it not a fact that an arrangement was made that whoever was an officer, or whatever position the parties thereto held, should continue in that same position?

A. No, sir.

Q. That was not discussed in the board of directors?

A. Not that I recall.

Q. Was it ever discussed in the board of directors after you were elected as to the financial condition of the company or the corporation?

A. Not in my presence.

Q. Was it ever discussed among the board of directors after you were elected as to whether the Fargo Company were solvent or insolvent?

A. Never.

Q. The question was never raised?

A. Not in my presence.

Q. Did you know of the large amount of liabilities outstanding at the time you were elected as a director that the Fargo Company was unable to pay?

A. I knew nothing about the finances.

Q. You made no inquiry?

A. I made no inquiry.

Q. And after you were elected you paid no attention as to whether the firm was solvent or insolvent?

A. I paid no attention at all.

Q. Nor as to who should run the business?

A. Nor as to who should run the business.

Q. Nor what either of the parties should do.

A. I understood that the Fargos were to manage the business.

Q. From whom did you understand that?

A. Well, I cannot tell. It may be an impression that I received subsequently.

Q. Well, give your best recollection as to who gave you the impression?

A. I should think Mr. Porter.

Q. Your co-director?

A. Yes, Mr. Porter.

Q. Please state what he said to you on that subject.

A. I cannot recall any conversation.

Q. Give the substance of it?

A. I do not recall the substance of it. It is simply an impression that I have in my mind.

Q. You cannot state what gave you that impression?

A. No sir.

Q. You cannot state a word about it?

A. Not a word.

Q. Please look at article ten there, section one, and see what, if anything, that states about the further duties of the board of directors?

A. Article ten, section one?

Q. Please read it into the record.

A. "The salary of each officer of the company shall be fixed yearly by the board of directors, who shall also have authority to fix the salaries of the employes of the company from time to time as they think fit, and to confer upon such employes such responsibilities respectively, not inconsistent with the by-laws, as they shall deem proper."

Q. Did the board of directors while you were a member take any action under that section of the by laws?

A. Not that I know of.

Q. You never heard it mentioned?

A. Never.

Q. Did they from time to time attempt to fix the salaries of the officers or employes?

A. Not that I know of.

Q. Who were the employes while you were a director?

A. I do not know.

Q. Were the Fargos connected with the business while you were a director—Charles E., Frank M. and E. A. Fargo?

A. I think so.

Q. What salaries did they receive?

A. I do not know.

Q. What salaries did they receive before you were elected a director?

A. I do not know that.

Q. And you do not know how much they received after you were elected a director?

A. No sir.

Testimony of Buell McKeever

Q. Was the question ever raised in the board of directo while you were present?

A. No sir.

Q. How many employes did they have?

A. I do not know.

Q. How much merchandise did they have on hand when yo were elected a director?

A. I do not know.

Q. Did you take any action to ascertain?

A. No sir.

Q. What was the business of the Fargo corporation?

A. Manufacturing boots and shoes.

Q. Out of what?

A. Raw material, I suppose.

Q. Did they have on hand any raw material when you we elected a director out of which they manufactured shoes?

A. I could not tell you.

Q. Did you make any inquiry as to whether they had or no

A. I did not.

Q. Was the question ever discussed among the board of di rectors while you were on the board in regard to the purchase material out of which to manufacture shoes?

A. No sir.

Q. Was the question ever raised whether the business of th Fargo Company should continue as it was before you were elected a director?

A. No sir.

Q. You didn't know anything about it?

A. I didn't know anything about it.

Q. Did you know whether they were going on with the busi ness or going to close up?

A. No, sir; I knew nothing about it.

Q. Did you make any inquiry about it?

A. I did not.

Q. Did they continue the business at any time after yo were elected a director.

A. I think so.

Q. On what do you base that fact?

A. Well, I cannot positively state of my own personal knowl edge that they continued the business after January 6. I know nothing about their business—had nothing to do with it at all.

Q. Did you know from whom they bought goods after the 1st of January?

A. I did not.

Q. Did you know whether they bought them on credit or not?

A. I did not know.

Q. Was the question ever raised in the board of directors?

A. I do not think it was.

Q. You never heard it discussed?

A. No sir.

Q. How much salary did Charles E. Fargo receive after you were elected a director?

A. I do not know.

Q. How much did Frank M. Fargo receive?

A. I do not know.

Q. How much did E. A. Fargo receive?

A. I do not know.

Q. What did Frank M. Fargo do after you were elected a director?

A. I do not know.

Q. You do not know who acted as assistant treasurer after you were elected treasurer?

A. I do not know whether there was any assistant treasurer.

Q. You do not know whether they had any treasurer?

A. No sir.

Q. You do not know whether they handled any money?

A. No sir; I knew nothing about the business at all.

Q. And you made no inquiry about it?

A. None at all.

Q. Did the board of directors at any time while you were a member discuss the question of taking an inventory of the assets of the corporation?

A. No sir; not in my presence.

Q. And was it ever discussed whether the Fargo Company was solvent or insolvent?

A. No sir; not in my presence.

Q. Was there ever any discussion as to carrying on the business at Dixon, Illinois?

A. No sir; not in my presence.

Q. Nor of selling goods in Chicago?

A. No sir.

Q. Are you still the treasurer of the company? Can you tell without looking at the book before you?

A. I think it is a matter of law whether I am treasurer. I am not sure. (After referring to the minutes.) The minutes of the meeting held on January 9th state that I was elected treasurer

Testimony of Buell McKeever.

for the ensuing year. That year has expired and I do not know whether I hold office or not. So far as I know, my successor has never been elected.

Q. You have never been notified that your successor has been elected?

A. I have not.

Q. Well, do not the by-laws hold there that you are treasurer until your successor is elected?

A. Article 4, section 2, reads as follows: "The officers shall be chosen by the board of directors from their own board immediately after and on the day of their election by the stockholders, and they shall serve for one year or until their successors are elected and qualified." I do not suppose I am now treasurer.

Q. Did your board of directors take any action to choose from your board the officers for the ensuing year?

A. Not that I know of; no, sir.

Mr. Beale: What do you mean by the ensuing year—next after the one for which you were elected?

The Witness: Yes sir.

Cross-Examination by Mr Smith.

Q. It was understood, Mr. McKeever, at the time you consented to act as a member of the board of directors, that you were to act in the interests of the rubber companies who were clients of Isham, Lincoln & Beale?

A. I was subsequently told, as I have stated, that I was to act at Mr. Beale's request, and I do not recall very distinctly for what. The object was, I think, that it was for the purpose of preventing C. H. Fargo & Co. giving judgment notes of such nature to creditors.

Q. Or doing anything that would impair the securities held by the rubber companies over C. H. Fargo & Co.?

A. Yes sir.

Q. And in all that you did you acted under the direction of Messrs. Isham, Lincoln & Beale, or some member of the concern, either expressed or intimated to you in some way?

A. Yes sir.

Q. And you acted under their direction and not from your own judgment about the matter; you did not assume any responsibility, in other words?

A. Well, what do you mean by that question?

Q. I mean simply to convey the idea, which I supposed to be

e fact, that you were acting in the board of directors in the terests of the rubber companies and under the direction of the bber companies' attorneys?

A. I was acting for Mr. Beale and under his direction; but hen you say that I had no responsibility for my action—

Q. I mean by that you did not assume to exercise any judgent apart from the judgment of Mr. Beale, or some member of s firm?

A. So long as they were consistent with what I thought was oper.

Q. As long as they were consistent with what you thought as proper, and it was for that reason, was it not, that you did t investigate the affairs of the company and assume to know ow to act in an independent manner?

A. Yes sir.

Q. Based upon the condition of the company's business or s affairs?

A. Yes sir.

Cross-Examination by Mr. Newman.

Q. Mr. McKeever, at the foot of the record of the meeting held August 6, 1896, I see a memorandum: "We, and each of us, reby consent to the foregoing meeting and to the proceedings ken therein," and under that are signed the names of Fredck B. Fuller and Buell McKeever. Do you remember when you gned that memorandum?

A. I think it was during the latter part of August or early in eptember, 1896.

Q. Where were you when these events were transpiring?

A. You mean on August 5th, or about this period?

Q. Yes.

A. I think I was either in New York City or on the coast of laine—York Beach, Maine.

Q. Away on your vacation?

A. Yes sir.

Q. And you did not return until after the middle of August, 896?

A. I think it was the 10th or 11th of August.

Q. After this meeting?

A. Yes sir.

Q. Was Frederick B. Fuller also absent from Chicago August 1896?

Testimony of Buell McKeever.

A. I could not tell you that of my own knowledge. I think it was, but I did not know positively.

Q. This record of the meeting held on August 5, 1896, refers to the giving of judgment notes to the Metropolitan National Bank and also to the sale of the Dixon factory to the Metropolitan National Bank. As a matter of fact, you knew nothing about those things personally?

A. Nothing at all; I had nothing to do with it.

Q. You signed this record simply because Mr. Beale or Mr. Porter asked you to?

A. I did.

Q. You made no investigation?

A. None at all.

Q. You did not feel that you had any responsibility in connection thereto, relying wholly on what Mr. Beale and Mr. Porter told you in that connection?

A. Yes, sir.

Testimony of Tiffany Blake.

TIFFANY BLAKE, called as a witness on behalf of defendants, being first duly sworn, was examined in chief by Mr. Beale and testified as follows:

Q. Please state your name, age, residence and occupation.

A. Tiffany Blake, 65 East 20th street, Chicago; lawyer.

Q. What was your occupation and place of business in 1896?

A. I was assistant corporation counsel of the City of Chicago.

Q. Who was corporation counsel at the time?

A. Mr. William G. Beale.

Q. You became a director of the corporation of C. H. Fargo & Co. early in January, 1896, did you not?

A. I did, sir.

Q. Did you know at the time or about that time that you became such director that you were elected such director?

A. Yes.

Q. Please state the circumstances under which you learned about it, and from whom? What was said to you, if anything?

A. Why, during—about the first of the year, you, Mr. Beale saw me at the office—at your office in the city hall, and asked me if I had any objection to serving as a director in C. H. Fargo & Co. I do not remember at this time whether we had any particular conversation. I think not; but I said that I would serve

Testimony of Tiffany Blake.

ou, Mr. Beale, then told me that I would be elected; and some w days after that, I do not think it was very long after that, I s notified, I do not remember how, that I was elected a director d requested to come to a meeting of the board of directors.

Q. Do you recollect whether any explanation was made at the me as to why you were to be elected a director, and, if so, what as it?

A. I do not remember. We had some conversation, Mr. Beale, t I do not remember whether there was any particular explana n on that point or not.

Q. Do you remember whether anything was said to you at the me as to the probable duration of your service or relation as ch director?

A. I do not remember anything specific having been said. I ow my understanding was it would not be a permanent duty.

Q. Do you remember whether there was anything said to you not to the substantial effect that the purpose was to protect e United States Rubber Company and L. Candee & Company? hether anything was said on that subject?

A. I am quite sure not. I certainly do not remember.

Q. You do not recollect anything on that subject?

A. No, sir.

Q. Was there anything said to you as to whether or not you uld have active duties to perform?

A. No, sir.

Q. After you were elected, as a matter of fact, did you have y active duties to perform in connection with the affairs of C. Fargo & Co., or did you perform any?

A. I attended two meetings.

Q. What else did you do?

A. Nothing else.

Q. Did you take any part in the controlling of their business managing it in any way?

A. None whatever.

Q. Were you ever asked to do so?

A. Not at all.

Q. You knew a little something of the concern of C. H. Fargo Co., did you not?

A. Yes.

Q. You had a brother employed there?

A. Yes.

Q. One of the directors' meetings at which you were present as on or about August 5th, was it not?

Testimony of Tiffany Blake.

A. Some time in the summer, I do not remember whether it was in July or August; sometime in the summer.

Q. At that meeting Charles E. Fargo was present, was he not?

A. Yes, sir.

Q. And concurred in the action with the rest of you, did he not?

A. Yes; the action, such as we took, I recollect, was unanimous.

Cross-Examination by Mr. Tenney.

Q. How old are you, Mr. Blake?

A. Twenty-seven.

Q. How long had you been engaged in practicing law in January, 1896?

A. Three years.

Q. What other business have you been engaged in?

A. None.

Q. Who was the relative that you had who was connected with the firm of C. H. Fargo & Co.?

A. My brother.

Q. What position did he hold?

A. Why, I think he was an assistant buyer.

Q. Here in the city?

A. Yes.

Q. Was he a stockholder in the concern?

A. No.

Q. You were not a stockholder in that firm?

A. No.

Q. I think you said in answer to a question of Mr. Beale that through the connection of your brother you knew something of the affairs of the concern. What did you know?

Mr. Beale: I did not mean of the affairs; I meant generally the concern.

A. The question was not that, but something of the Fargo I knew some of them by my brother, but nothing of the affairs.

Q. You knew there was such a concern in the shoe business?

A. That is all.

Q. Did you know who the stockholders were?

A. No.

Q. Did you know who the creditors were?

A. No.

Q. Did you know whether they were prosperous or otherwise?

A. Not at all.

Q. Did you gain any information on this subject during the me you were a director—by the way, are you still a director?

A. I guess not.

Q. What was the unanimous action you referred to at the last eeting you attended?

A. It was the passage of some resolution offered at that time.

Q. What was it?

Q. I do not remember the purport of it.

Q. Don't you remember anything that took place?

A. Simply the resolution was offered after the formal opening the meeting.

Q. Resolution on what subject?

A. I do not remember the purport of it.

Q. Don't you remember the subject without reference to the rport of the resolution itself?

A. No; I do not remember the subject of it.

Q. Nor anything that took place at that meeting?

A. I only remember in a general way that a resolution was fered and was generally discussed.

Q. But you do not remember what the resolution was about?

A. No.

Q. You understood it had some reference to the failure of the use of C. H. Fargo & Co., did you not?

A. I did not know anything about the failure. All I knew as that it had something to do with the internal affairs of the mpany.

Q. You say you did not know it had anything to do with the ilure of the company?

A. I do not remember that I did.

Q. Didn't you know at that time that the company was about fail?

A. I believe I did.

Q. From whom did you get that knowledge?

A. Well, I suppose from the circumstances at that time, ost of which—in fact all of which—have passed out of my mind ow.

Q. How long were you present at the meeting?

A. I do not remember how long; I do not think the meeting sted more than half an hour, possibly longer.

Q. What discussion did you have about the subject of the eeting before the meeting took place?

A. I did not take part in any discussion.

Testimony of Tiffany Blake

Q. Did you talk with anybody about what was coming up before the meeting?

A. I do not remember of any discussion outside of the meeting at this time.

Q. Did you talk with Mr. Beale or Mr. Porter at that time?

A. I do not remember of any conversation outside of the meeting.

Q. Who in the meeting talked about or discussed the business which was brought before the meeting.

A. Why, I think Mr. Porter.

Q. Your understanding was that Mr. Porter was familiar with the matters and you looked to him for information about them, was it not?

A. He was the one that talked in the meeting, of course; I had no particular knowledge about the concern; consequently I did not have to discuss—consequently I listened to the discussion taking place between the others.

Q. You had no information to guide you in your actions?

A. No.

Q. What was it that determined you to vote on this important occasion upon the motions that came up?

A. I believe at that time I took the statement of the members of the board there present in the meeting.

Q. What particular ones?

A. Those who discussed it. I think Mr. Porter; possibly the Fargos, if they talked; I do not remember the details of it at all.

Q. Don't you remember anybody but Mr. Porter saying anything?

A. Yes; I think so.

Q. Who?

A. One of the Fargos, I think.

Q. Which one?

A. I do not remember now.

Q. Mr. Porter had the resolutions that he desired passed already drafted, did he not?

A. I think he read them

Q. And you all voted for them as he had prepared them?

A. Yes.

Q. What meeting had you attended before that?

A. Meeting in the winter.

Q. When in the winter?

A. Well, that was the winter of 1895 and 1896.

Q. When? At what time in the winter?

Testimony of Tiffany Blake.

A. It seems to me about midwinter—about the middle of the winter.

Q. That is, about February or March, or do you mean about January?

A. Possibly December—December or January.

Q. Did you ever attend any meeting between that one and the final one in August?

A. No.

Q. That meeting was very shortly after you were elected, as I understand?

A. Yes.

Q. Did you, between those times, have any conferences with anybody on the subject of the affairs of the Fargo Company?

A. No sir.

Q. What took place at the first meeting that you attended?

A. Why, we elected some officers, I think; that is all I remember now.

Q. Do you remember anything about resolutions with reference to the giving of judgment notes?

A. There was some such resolution.

Q. You recall the fact of voting on such a resolution, do you?

A. Yes.

Q. Do you remember the people who were to get those judgment notes?

A. I do not; no.

Q. You have heard of L. Candee & Company and the United States Rubber Company, have you not?

A. Yes, sir.

Q. You knew them as clients of the office of Isham, Lincoln & Beale?

A. Yes; I think I did know one of them.

Q. By the way, were you ever in the office of Isham, Lincoln & Beale?

A. Yes, sir.

Q. And you went from there to the position of assistant corporation counsel, did you not?

A. I did.

Q. It was your understanding that you were put on the board of directors of the Fargo Company as a kind of formal matter?

A. Yes.

Q. And it was your understanding, also, that you were put

Testimony of Tiffany Blake.

on there in the interest of L. Candee & Company and the United States Rubber Company?

A. I do not know in whose interest I was put on there.

Q. Didn't you know that these were the people—the concern—whose interests were being looked out for in this Fargo Company by Isham, Lincoln & Beale, and by Mr. Porter?

A. I did not inquire at that time what the relation was between the parties.

Q. You made no inquiry about it?

A. No; I don't think I did; I might have, at that time, but do not remember.

Q. That was in substance your understanding of the situation, wasn't it?

A. I think it was.

Q. You knew that nearly all of the board of directors had been elected from the office of Isham, Lincoln & Beale, did you not?

A. I knew several of them had.

Q. And your understanding was that you were all on the board for the same purpose?

A. I supposed so—I have no doubt.

Q. What do you know about the execution of the judgment notes to the Metropolitan National Bank?

A. I do not remember anything in regard to it.

Q. Don't you remember any such transaction?

A. No.

Q. Have you ever seen the record book of the corporation?

A. I saw it at that time; I have not seen it since, except that I saw it to-day.

Q. You signed the record of the meetings you attended: do you remember participating in any discussion or hearing any discussion at any of those meetings about the debt of the Fargo Company to the Metropolitan National Bank?

A. I do not.

Q. Do you remember voting for any resolutions to convey the land of the company to the Metropolitan National Bank for $85,000?

A. I do not remember; I know that certain resolutions were passed, but I do not remember what they were, even after you state.

Q. Did you read them over?

A. I did at that time.

Q. Did you read them, or did some one read them in the meeting?

A. They were read over, and I read them after they were sted in the minute book. Testimony of Tiffany Blake.

Q. When was it you signed them?

A. Why, directly after. I do not remember whether it was a y or two after or that same day.

Q. As I understand it, you never took any part in the busi- ss of the company in any way at all?

A. No, sir.

Q. Did your brother know that you were a director?

A. No; he did not.

Q. You did not tell him of it?

A. No, sir.

Q. It was your understanding of the matter that the fact that ou were a director was to be kept confidential, was it not?

A. Well, I did not care to take any chances on it; as I recall ow, it was a professional matter I did not care to tell my other.

Q. It was a professional matter?

A. As far as I could see, yes.

Q. And your professional relations were such you did n ot ish to disclose it to your brother or anyone else?

A. I do not remember whether I told anyone else or not; I do ot suppose I did.

Q. Looking at this as a professional matter, towards whom as the professional obligation that you had in mind in keeping ill about this matter?

A. I do not know that it was directed toward anyone. I mply did not care to discuss it; that is all.

Q. Don't you recollect that something was said about not scussing it, and you agreed to the necessity of keeping quiet bout it?

A. No.

Q. Mr. Fargo has stated here that it was a matter of great portance that the people should not learn of the fact that ere had been this change in the board of directors by which urself and others, who had no connection with the business, d been placed on the board. Don't you remember of anything ing said about that?

A. I do remember now; I think at one of the meetings—I do ot remember which it was—one of the gentlemen—I think it as one of the Fargos, asked me not to say anything to my other about it.

Q. Nor to anyone else?

Testimony of Tiffany Blake.

A. Not as I remember now; he did not request me not to spe to anyone else. I supposed at that time that as my brother w clerk in the store he did not care to have the business discuss with a clerk.

Q. At any meeting that you were present at, was any discu sion connected with the ordinary affairs of the company, or any subject connected with the ordinary running affairs of t company, talked of?

A. I do not remember any such discussion.

Q. For buying goods or financing the company or sel goods, or extending its business, or contracting its business?

A. I do not remember any such discussion—nothing th seemed to be.

Q. You did not, outside of directors' meetings, take part any such discussion with anyone connected with the compan

A. I did not.

Cross-Examination continued by Mr. Newman.

Q. Why did you vote in favor of the resolution rather th against it?

A. Why, it seems to me now that the matter was brie stated by Mr. Porter in the meeting, and there did not see to me to be any objections as far as I knew at that time. I d not have profound knowledge of the affairs of the company.

Q. You knew that the giving of the judgment notes and t selling of the factory to the Metropolitan National Bank mea the winding up of the business?

A. It seemed to me probable.

Q. Now that was a pretty serious matter?

A. Yes.

Q. And you relied wholly upon what Mr. Porter told you w proper in the premises?

A. I do not know that I relied absolutely; there seemed not ing on the face of the matter that seemed wrong.

Q. You made no investigation on your own account?

A. No.

Q. In fact, you and the other boys did substantially wh Porter and the Fargos wanted you to do?

A. I suppose so.

Q. That is about the essence of it, isn't it?

A. I suppose it was; they read the resolution and we vot on it.

Re-direct Examination by Mr. Beale.

Testimony of Tiffany Blake.

Q. Please look at the minute book and see how many minutes
n signed; that is, minutes of how many meetings?
A. Two.
Q. And those two were the only meetings that you attended?
A. Yes, sir.
Q. Did you read the minutes before you signed them?
A. I did, at that time.
Q. And was it then your understanding that the minutes
re correct?
A. It was.
Q. Is it your present understanding that they were correct?
A. I believe they were; yes, sir.
Q. Do you remember that any action was taken in any way
either of those meetings not shown on the minutes of those
o meetings, or different from what is shown on the minutes?
A. I am sure not.
Q. You made some answer to a question of Mr. Tenney's
out the subject of judgment notes coming up at one of those
etings; you referred, then, only to what is stated in the min-
es of the meeting?
A. Oh, yes, sir.
Q. Nothing came up different from what appears there?
A. No, sir.
Q. There were no judgment notes voted at any time at either
those meetings different from what appears on the minutes,
in addition to what appears in the minutes.
A. No, sir; I read the minutes at the time and they comprise
at was done and all that was done at the meetings at which I
s present.

Testimony of G. C. Madison.

EORGE C. MADISON, called as a witness on behalf of defendants, being first duly sworn, was examined in chief by Mr. Beale, and testified as follows:

Q. Please state your name and residence?
A. George C. Madison, 698 Orchard street, Chicago.
Q. What is your occupation?
A. At present I am bookkeeper for Isham, Lincoln & Beale.
Q. Were you such bookkeeper in the year 1896?
A. Yes, sir.

Testimony of G. C. Madison.

Q. And some time prior thereto?

A. A year or so.

Q. In the early part of January, 1896, did you become director of the corporation of C. H. Fargo & Co.?

A. I did.

Q. After having become such director what did you at any time do in connection with the affairs of the company?

A. I attended two meetings.

Q. Of the board of directors?

A. Of the board of directors.

Q. And acted at those meetings?

A. Acted at those meetings.

Q. Did you afterwards sign the minutes of the meeting?

A. I did.

Q. Will you please look at the minutes in the minute book there and state whether those minutes are the minutes that you signed?

A. They are.

Q. You attended only two meetings, I understand?

A. That is all I recollect; I think that was all.

Q. Who asked you to be a director, or informed you that you had been elected a director, whichever it was?

A. I am a little in doubt; it was either Mr. Porter or Mr. McKeever, my memory leaning toward its being Mr. McKeever.

Q. When was this with reference to the time of your election —before or about the time or subsequent to it?

A. A day or two before I was notified of my election.

Q. That is, as I understand you, you say the subject was mentioned to you a day or two before you were actually elected?

A. That is my recollection.

Q. Can you recall what was said to you?

A. I cannot, except that I was asked if I would consent to become a director of the Fargo Company, and I understood in some way that the request really came from you.

Q. Was anything said in any way as to the extent of the duties you would have to perform or the attention you would have to give to their affairs, or the length of time you would have to serve?

A. Nothing whatever.

Q. You do not remember anything of those circumstances?

A. Nothing whatever.

Q. What, if anything, did you have to do with the ordinary

siness affairs of the company, or did you do, while you were ch director?

A. Nothing outside of my attendance at those two meetings, d acting as, I believe, secretary of one of those meetings.

Q. In the absence of Mr. McKeever?

A. I believe so, for some reason.

Q. In acting at those meetings, you co-operated with Mr. harles E. Fargo and Mr. Porter, did you not?

A. Yes, sir.

Q. And practically followed their directions?

A. I did.

Q. Was there any disagreement or difference in any way at ose meetings?

A. I do not recall anything but harmony.

Q. Those two acted together?

A. Yes, sir.

Q. In harmony?

A. In harmony, yes, sir.

Q. Did you know Frederick B. Fuller?

A. I did.

Q. Do you know the fact now that he is not living?

A. As well as anyone knows such a thing who has not at-nded the funeral, yes, sir.

Q. It is a matter of common understanding, is it not, that he not now living?

A. Yes, sir.

Q. In the first half of 1896 he was in the office of Isham, incoln & Beale?

A. Yes, sir.

Q. As a law student?

A. As a law student.

Q. And in the early fall of 1896 he left that office, did he not, go into practice for himself?

A. I am a little in doubt about it—I think it was in the fall of e same year.

Q. Would you know his signature if you saw it?

A. I hardly think I would, except as I would know it here as ing his, because I think I saw him sign it.

Q. You believe the signature purporting to be attached by him the minutes there to be his signature, do you?

A. Without doubt, yes, sir.

Evidence taken before Master.

Testimony of G. C. Madison.

Cross-Examination by Mr. Tenney.

Q. You said you substantially followed the suggestions and action of Mr. McKeever and Mr. Porter and other gentlemen connected with the office of Isham, Lincoln & Beale, in the part you took and the votes you cast as a director of this company?

A. Yes, sir.

Q. That was so throughout all the meetings you took part in?

A. Yes, sir.

Q. You had no knowledge of the transactions—those upon which you were called to vote?

A. I did not.

Q. And have not now, except as gained through the fact that it is a matter of litigation?

A. That is all.

Q. In whose interest did you understand you were placed on the board of directors?

A. Why, I naturally supposed that I was acting in the interest of the firm that I was with and the firm of C. H. Fargo & Co.

Q. The firm you were with, you mean Isham, Lincoln & Beale?

A. Isham, Lincoln & Beale.

Q. And their clients?

A. At that time I knew but very little about their clients.

Q. That is, you did not know who the clients were?

A. I do not think I did at that time.

Q. Did you understand you were acting in the interests of their clients?

A. I understood I was acting in the interest of the clients of the firm.

Cross-Examination continued by Mr. Manning.

Q. You are an expert bookkeeper, are you not?

A. Well, I do not know that I am an expert in the professional sense of the term.

Q. You have had a good deal of experience in keeping books?

A. Yes.

Q. Did you make any examination of the books of the firm of C. H. Fargo & Co.?

A. I never saw the books until after the failure, some time after, several months.

Q. Did you ever make any inquiry and ask the privilege of seeing the books of the Fargo Company?

A. I never did.
Q. You didn't know anything about the standing of the company financially and never did?
A. I never did.
Q. You did not try to ascertain the condition?
A. I did not.
Q. Was the question ever discussed while you were a director there or how they were going to purchase their goods?
A. Never to my knowledge.

Testimony of G. C. Madison.

CHARLES L. JOHNSON, called as a witness on behalf of defendants, being first duly sworn, was examined in chief by Mr. Beale, and testified as follows:

Testimony of Chas. L. Johnson.

Q. Please state your full name.
A. Charles L. Johnson.
Q. What is your residence and occupation, Mr. Johnson?
A. I live partly in New York and partly in Connecticut, and I am connected with both the United States Rubber Company and L. Candee & Company.
Q. What was your relation to each of those companies in January, 1896?
A. Treasurer of L. Candee & Company and director of sales in the United States Rubber Company.
Q. You occupy these two places to-day, do you?
A. Yes; except under slightly different designation; treasurer of L. Candee & Company and manager of sales in the United States Rubber Company.
Q. How long have you known the corporation of C. H. Fargo & Co.?
A. Since its organization, which, I think, was in 1891, or thereabouts. You now speak of the corporation?
Q. Yes. And you had previously been acquainted with the firm?
A. I had.
Q. How long had L. Candee & Company had business dealings with C. H. Fargo & Co., the partnership?
A. I cannot answer precisely, because it was prior to my connection with L. Candee & Company, which began in 1873. If my memory serves me right, they were doing business with them when I entered the company.
Q. You knew Charles Fargo, senior?

Testimony of Chas. L. Johnson.

A. I did.

Q. How many years prior to his death, or since about what time?

A. I think I came to know Charles H. Fargo about 1883.

Q. And how long have you known Charles E. Fargo?

A. Why, a little previous to 1887, but more intimately, both socially and in a business way, since then.

Q. Has L. Candee & Company had dealings for many years with the partnership and with the corporation?

A. From some time prior to 1873 down to 1895.

Q. What was the amount of business, to the best of your judgment, the average business done by L. Candee & Company with C. H. Fargo & Co.—the average yearly business?

A. $250,000 to $300,000 net per year; greater in some years, less in others.

Q. The Candee Company ceased doing business—making sales here, in 1895, did it not?

A. Yes; on April 1, 1895.

Q. Did you come to Chicago in January, 1896, and have a conference with Mr. C. E. Fargo and one or more of his brothers about the affairs of C. H. Fargo & Co.?

A. I did.

Q. You may state how you happened to come to Chicago at that time?

A. The last of December, December 30th or 31st, either Mr. Sadler or myself, both in the New York office at that time, received a telegraphic communication from Mr. Fargo, the result of which was (maybe it was by telephone, I do not remember how it was accomplished—I believe it was by telephone), and the result of the telephone conversation was that we came on here, I think, on the 2d leaving on the the 1st—I remember particularly leaving on New Year's Day.

Q. On arrival here, you had an interview with Charles E. Fargo shortly after your arrival?

A. The evening of January 2d, I think, with Charles E. Fargo and F. M. Fargo.

Q. You and Mr. Sadler came together and your interview was at the Auditorium Annex Hotel, was it not?

A. It was.

Q. As briefly and succinctly as you can, Mr. Johnson, you may state the substance as well as you can remember it of the interview which took place, what was said with reference to the

fairs of C. H. Fargo & Co., and what, if anything, they wanted u to do?

A. As my memory serves me, the Messrs. Fargo, for I think ey were both present, stated they wanted to put before us the ndition of their company, that they had some maturing notes, d the fact that while they possessed ample assets with which meet the liabilities of the company, they were in pressing need money for some few weeks—the time I do not remember, perps two months—and they desired some assistance some way other from some source. And owing to the very friendly reions that had always prevailed and perhaps owing to the fact at in 1893 some help had been given them, they stated the case ainly to us, and asked our aid. A brief examination of some gures they presented indicated to us that the business was lly solvent, that with proper management, in our belief, it uld be kept as a going business, and eventually all its liabilities could be paid from assets. Approaching finally the parcular point, I believe they suggested that the sum of $25,000 was cessary to tide them over immediate pressing obligations, hich, of course, was not received with very much favor by us, t being in that business—loaning money.

Q. What was done at that interview, if anything? What was certained, or done about advancing that money at that interew, if anything?

A. I practically refused the advance at that time.

Q. You say that the Fargos had been helped, or indicated at they had received some help; do you mean that any adnce had been made to them in 1893?

A. No.

Q. During all the dealings of L. Candee & Company with e firm or corporation of C. H. Fargo & Co. had there ever any estion arisen about their credit down to 1893?

A. Down to 1893, no, sir.

Q. How did any question arise at that time?

A. It arose, if I remember Mr. Fargo's statement correctly, rough an unwillingness on the part of the Metropolitan Bank extend to them the accommodation equal to what had been tended before that time, the reason given being the extreme ingency of the money market and the desirability on the part banks to contract loans.

Q. Then, if I understand you correctly, whatever question s raised in 1893 between the Fargo Company and L.

Testimony of Chas. L. Johnson.

Candee & Company about the credit of the Fargo Company was raised by the Fargos themselves?

A. By the Fargos themselves, and came as a total surprise to us.

Q. The substance of that situation was that Mr. Keith insisted upon some judgment notes from the Fargo Company, did he not, for the indebtedness?

A. You speak now of 1893?

Q. 1893.

A. That was it.

Q. Did you come out here in connection with this transaction in 1893, or were you out here?

A. I came out here in connection with this and others.

Q. Do you remember what was done at that time? If so you may state it?

A. L. Candee & Company had been trading with C. H. Fargo & Co., supplying them with rubber boots and shoes, under a certain contract, which was in effect a purchase and sale contract with an additional arrangement that the payment should be made only for such goods as were sold, and at that time, in view of the stringent condition of the money market, I requested that it should be made clear—that the goods in the hands of C. H. Fargo & Co. should be ours, and in effect took them back from them into the custody of the company.

Mr. Newman: Pardon me; what year are you now speaking of?

The Witness: 1893.

Q. What was the value of the goods, approximately, if you know, thus taken back, as far as you recollect?

A. I should say in—well, I should say in the neighborhood of $125,000, possibly from $100,000 to $125,000, net value.

Q. Wasn't it a great deal more than that?

A. I am not clear.

Q. It was at least that, wasn't it?

A. Well, I should still say $125,000.

Q. What was done about resuming possession of these goods—was a custodian put in there?

A. They were set aside on a certain floor, the sixth, if I remember correctly, of the building occupied by C. H. Fargo & Co. and some kind of a sign put up—I remember seeing it, with our name on it—with a custodian put in charge.

Q. Who was the custodian?

A. I do not remember his full name, but it was Hotchkiss.

Q. Who paid for his services?

A. Ultimately L. Candee & Company paid for them; I say L. Candee & Company ultimately, because the actual money was handed by the Fargo Company to this man by them and charged to L. Candee & Company and paid to C. H. Fargo & Co. by L. Candee & Company.

Q. The possession of the custodian continued only a short time, did it, practically only—

A. Practically a short time—I do not remember just what time.

Q. Practically until matters were adjusted with the Metropolitan Bank?

A. Yes.

Q. As soon as matters were adjusted with the Metropolitan Bank the custodian was dropped?

A. Yes; I should say so.

Q. Then about the indebtedness—what was done by the Fargo Company with your company, L. Candee & Company, and with the bank?

A. At what time?

Q. 1893. And how much was the indebtedness to the Candee Company approximately?

A. The indebtedness must have been somewhere in the neighborhood of $125,000, because, if my memory serves, an arrangement was made between ourselves and the Metropolitan National Bank whereby C. H. Fargo & Co. gave to us certain judgment notes and the one they had given to the Metropolitan National Bank, the amount I have forgotten, but the amount given L. Candee & Company I am sure was $125,000.

Q. What was the general arrangement between L. Candee & Company and the Metropolitan National Bank?

A. That those two judgment notes should stand, if I use the right expression upon an equal basis?

Q. This agreement was that one creditor should not try to get ahead of the other in case trouble arose?

A. That is it—there was not to be any advantage by one judgment creditor over the other.

Q. Was there not an arrangement between the Fargo Company that when a certain amount of the judgment notes to the bank and L. Candee & Company were paid off, the judgment notes should be surrendered?

A. Yes.

Q. Was that carried out?

Testimony of Chas. L. Johnson.

A. It was.

Q. As a matter of fact, the indebtedness to L. Candee & Company was all paid off, was it not, before the judgment notes were surrendered? I do not mean before the judgment notes were surrendered, but ultimately?

A. The indebtedness was ultimately paid off.

Q. Did you seek or demand judgment notes in behalf of L. Candee & Company at that time?

A. On the contrary, I desired that they should not be given; the demand came from the Metropolitan Bank.

Q. What was the attitude of Charles E. Fargo with reference to that demand—did he acquiesce in it pleasantly?

A. I think not.

Q. As a matter of fact, he was very much irritated over it, was he not?

A. He was not feeling pleasant at that time with Mr. Keith.

Q. Do you remember whether or not he made some statement to Mr. Keith that if they pressed him he was going to prefer the rubber companies?

A. I have been so informed; whether it is so or not I do not know.

Q. Mr. Keith heard this, did he not?

A. I was so informed.

Q. And it made very much angularity between Mr. Keith and Mr. Fargo?

A. Rather, yes; it did rather—my impression is I heard this from some one connected with the bank.

Q. After this transaction in 1893, did the credit of C. H. Fargo & Co. again come in question later with the rubber company, or you, personally, down to January, 1896?

A. No; not at all.

Q. Did any occasion ever arise for suspecting their credit? Was there any suspicion about it?

A. Not previous to January 1, 1896, or, I should say, December 31, 1895.

Q. After this first interview at the Auditorium Annex, in January, 1896, a number of subsequent interviews were held, were they not?

A. They were constant for two or three days, or perhaps four days.

Q. When did you and Mr. Sadler leave Chicago?

A. The night of the 6th.

Q. Of January?

A. Yes; of January.

Q. When you left, you had advanced actually some money to the Fargo Company, had you not?

A. $10,000.

Q. The subsequent interviews, Mr. Johnson, were related to the general subject of the embarrassment of the Fargo Company and their desire to be somewhat assisted, did they not?

A. Yes.

Q. Do you remember whether you suggested at one of those interviews that the Fargos should go to the Metropolitan National Bank, and that possibly you two together would assist them, the Candee Company and the bank?

A. That suggestion was made, I do not know by whom; I cannot remember; either by Mr. Beale or myself.

Q. It was not made by the Fargo firm?

A. No; it was not made by the Fargos, but there was a suggestion of that kind, I cannot remember whether it was by Mr. Beale or myself.

Q. How was it received by the Fargos?

A. They were disinclined to put the position as it then existed before the Metropolitan Bank.

Q. Was it on account of the friction that had arisen in 1893?

A. Yes; and still existed.

Q. State in a general way, Mr. Johnson, as nearly as you can the general course of those discussions—negotiations—at the Auditorium Annex, and the general result—what was said and done.

A. I think when the Fargos put the situation before us, exhibited such figures as they did exhibit to me, which were of a hopeful character in their appearance, that I indicated to them my very strong desire that they should continue the business, that desire arising, I will say, from three causes; first, because of personal friendship for them; second, the fact that we like to keep open those channels of distribution here through which goods of certain brands are handled, and which, if by their failure, should be closed at that time, or any subsequent time would put us to the danger of losing some of that trade; the third one was that we disliked to have any of our people to whom we gave large credit fail, when there was good grounds for believing they could pull through by proper management. I think I made some sort of a generous remark that I would rather lose $25,000 than see them fail, for this reason, but said to them that we must have their exact status, and asked them if

Testimony of Chas. L. Johnson.

they were positive $25,000 was sufficient, and they seemed t believe it was; and I said, " Return to your office and reduce thi thing to the very lowest possible point of assets as compare with liabilities, and let me know the amount of money you nee to pull you through the situation "; and the result was, $50,0 was named. Shall I go on, sir?

Q. Yes, sir; and state what arrangement was arrived at?

A. Well, for the reasons mentioned, I finally consented tha $50,000 should be provided for them, on the conditions, however that Mr. Beale should find a way of having them give us absolut security for the indebtedness due both to L. Candee & Company and the United States Rubber Company.

Q. By absolute security, you mean so you would not have t trust to the possibility that they would secure somebody els particularly?

A. Yes; that would be one point, yes, absolute security so fa as assets were available.

Q. Did you make any examination of their books or papers yourself?

A. I made an examination of the figures they then and there put before me on a sheet of paper. An examination of the books No.

Q. State why you did not?

A. In the first place, the utmost confidence was felt in the Messrs. Fargo, not only by myself, but by the other people con nected with our company; second, it is a matter of a long time to really examine the assets of a business of that character composed as it is of manufactured goods of which expert knowledge is necessary to determine their value; then the quantity would have to be determined and then their value; and then the value of accounts receivable; this is a still more laborious task. It can always be estimated, but is very difficult of determination and then the value of unmanufactured goods on hand. This examination was not made, first, because we had not any force to do it, and second, because of the lack of time.

Q. Is it usual to make such examination in extending credit

A. I do not think it is.

Q. Have you ever heard of its being done by a bank?

A. I have never been in a bank, but I have never heard of it being done. I have never done it; perhaps it is done sometimes

Q. If it was necessary to make such an examination through lack of confidence, the lack of confidence would prevent the loan altogether, would it not?

Testimony of Chas. L. Johnson.

A. I should look at it that way in my own mind.
Q. They did, however, present you with many figures, did ey not—a statement showing the amounts of their assets and abilities?
A. Yes; I remember that I was a little severe on them. They esented a statement at the outset which showed some $550,000, d I slammed a pencil through some items that they had put wn and told them to go back and bring it down to a closer sis.
Q. Such things as office fixtures?
A. Yes; whatever it may have been, I cannot now recollect.
Q. Do you remember that particular item of office fixtures?
A. Yes; because I have encountered that item in a great any other inventories.
Q. The general showing that they made to you at that time as that the assets largely exceeded their liabilities.
A. Yes, sir; there was no question about it.
Q. Do you remember what suggestions were made respecting e kind of security which they would give, or should give?
A. I remember only one, besides the one that was finally rried into effect, and that was a chattel mortgage, or a mort- ge, I do not know how you would term it here.
Q. Was there any particular discussion on that subject?
A. There was discussion, but I think it was brief; it seemed practicable from a business point of view; I think it was also jected to by Mr. Fargo or Mr. Cratty—some one in their interest.
Q. It was only momentary?
A. Yes.
Q. Who suggested judgment notes, do you remember?
A. I am positive Mr. Fargo suggested them.
Q. You did not attempt to deal with the method at all your- elf?
A. No; not at all.
Q. You simply left it to me and to them?
A. The carrying out of the entire detail, yes, sir.
Q. Do you remember that I objected to judgment notes on the ound that they could give them to any one else?
A. Yes.
Q. Who finally made a suggestion as to changing the board of rectors?
A. Mr. Charles E. Fargo.
Q. That was ultimately assented to?
A. It was.

Testimony of Chas. L. Johnson.

Q. Were there not some conditions imposed under which judgment notes should be used? Was there not some discussion of such conditions?

A. Yes; quite a lengthy discussion of those conditions took place, particularly between you and Mr. Fargo and Mr. Fargo's attorney, and there was some talk of an agreement that should embody those conditions.

Q. Did not Mr. Fargo insist upon having a written agreement?

A. Yes; he was afraid of us.

Q. It was his desire, and not yours, that a written agreement should be made?

A. It was.

Q. Will you please look at this paper which is in evidence and is a mere draft of a proposed written agreement between C. H. Fargo & Co. and Charles L. Johnson, dated the 6th day of January, 1896, and state generally whether that does not embody about the conditions which they demanded, or C. H. Fargo & Co. demanded at that time? This is the one I handed you last evening.

(Copy of proposed contract, Defendants' Exhibit 9, on page of record, handed witness.)

A. This is the one I read last evening, and as near as I can recollect, it embodies the understanding then. Of course, it was put into this form after I went away.

Q. You never saw that, then, I believe?

A. This particular specification of "A," "B," "C," "D," "E," and so forth, was an arrangement between you and the Messrs. Fargo, but it embodies the general notions that prevailed, growing out of that discussion, as to how the security should be used.

Q. Was there any discussion at that time about putting in a custodian?

A. At what time, sir?

Q. In 1896?

A. None that I recollect of.

Q. Of your taking possession of the goods?

A. None at all.

Q. I mean while you were present?

A. None at all.

Q. Was there any discussion of setting aside in any part of the Fargo Building all consigned goods?

A. No, sir.

Q. These two subjects had come up in 1893?

A. The conditions were very different then, when they came in 1893.

Q. The goods which the Fargo Company held in 1896, which ey had received from the United States Rubber Company, were t sold to them at all, were they? Had there been any sales?

Mr. Newman: Objected to.

A. They were consigned to C. H. Fargo & Co.

Q. Under a written contract, partly written and partly printed, May, 1895? (Handing paper to witness, being Defendants' hibit 1, shown on p.——.)

A. Yes, sir.

Q. Mr. Johnson, that was the first contract between the ited States Rubber Company and C. H. Fargo & Co., was it ?

A. It was.

Q. So that the indebtedness to the United States Rubber Comny in January, 1896, represented just the business of that iod after this contract was made?

A. Yes, sir.

Q. After this contract was made with the United States Rubr Company, was there any further business between C. H. rgo & Co. and L. Candee & Company?

A. No, sir; absolutely none.

Q. Are you able to state, Mr. Johnson, approximately, what as the amount of the indebtedness of the Fargo Company to the o rubber companies in January, 1896?

A. Well, I am not so familiar with those details—particularly e United States Rubber Company—but L. Candee & Company's siness previous to that time I am more familiar with—I think remember that as being between $44,000 and $45,000.

Q. You would not at this moment undertake to state what it as to the United States Rubber Company?

A. I would not—Mr. Sadler is much more familiar with the siness of the United States Rubber Company than I am—in s details.

Q. After you had agreed to have $50,000 advanced, did you ndertake to see to the carrying out of that arrangement and e making of the agreement, and so forth personally, or did you ave it in the hands of somebody else?

A. Do you mean the agreement of January, 1896?

Q. Yes.

A. I did not attend to it at all.

Q. You left it in my hands, did you not?

Testimony of Chas. L. Johnson.

A. Yes; I left it in your hands.

Q. And went back to New York, simply paying them $10,0 on January 6, 1896?

A. Yes. And a few days later they advanced another $10,0 through me.

Q. L. Candee & Company advanced it through you?

A. Ultimately; the entire $50,000 was advanced by L. Cand & Company.

Q. All in the month of January?

A. All in the month of January.

Q. How much of that, if any, remains unpaid, or what re mained unpaid in August, 1896?

A. $36,500 and some odd dollars—$36,530, I think.

Q. The amount for which judgment was taken?

A. I shall have to refer to the papers to know what judgmen was taken for.

Q. After leaving here, Mr. Johnson, in January, 1896, yo had practically nothing more to do with the affairs of C. H. Farg & Co. down to the time of the failure, or even down to this time

A. Nothing whatever.

Q. It was a part of the arrangement that the Farges wou change a majority of their board of directors. What were the to do in connection with those changes? That is, whom were they to satisfy in those changes?

A. Satisfy William G. Beale.

Q. It was left practically for me to nominate the directors?

A. Yes.

Q. Did you have anything to do with their selection?

A. I did not, and I think I did not know who they were unt August; it was a confidential matter.

Q. Did you have anything to do in any way with advising directing or controlling the affairs of the Fargo Company afte January, 1896?

A. To the forenoon of January 6th, I advised them ver strongly to reduce indebtedness and get their business into the shape which it could be brought into, to carry forward successfully; after that, I believe I never advised them by a word.

Q. Or attempted to dictate or control them in any way, shap or manner?

A. Never.

Q. Did you in any way advise, directly or indirectly, the di rectors who were put in there?

A. I did not.

Q. At the time the $50,000 was advanced, did you believe Fargo's representations as to the assets?

A. Oh, most thoroughly.

Q. And advanced the money on the strength of them?

A. I never would have advanced it without them.

Cross-Examination by Mr. Newman.

Q. Mr. Johnson, why was a custodian appointed and possession taken of the sixth floor of the Fargo building in 1893?

A. Because the Candee Company wished to establish without doubt their title to those goods.

Q. They abandoned the method of establishing that title shortly thereafter by discharging the custodian and turning the property over to the Fargos?

A. It was not long after that, that the custodian was discharged; I do not remember how long.

Q. Have you any explanation to give why the rigid plan was adopted by the Candee Company, and then so shortly thereafter abandoned?

A. I do not think it was abandoned, sir, except so far as the discharge of the particular custodian.

Q. And the property was left in the custody of the Fargo Company?

A. It was in their building on the sixth floor.

Q. Well, was there any other custodian appointed?

A. I think not.

Q. In fact, the condition of things after that particular custodian was discharged remained the same to an outsider or mere observer as they had been prior to the appointment of the custodian?

A. No; I think not, sir.

Q. What particular thing occurred that would arouse the attention of an outsider?

A. The goods were held, I think, during the entire year rigidly part in a compartment on the sixth floor, with a sign bearing the name "L. Candee & Company" on it.

Q. Are you sure of that?

A. I am not.

Q. Did you ever see that sign after you returned, when you made the arrangement in 1893, at any time?

A. I could not answer that positively, but I think not.

Q. Did you in fact ever see such a sign there personally?

Testimony of Chas. L. Johnson.

A. I did.

Q. What was the sign?

A. A piece of board, if my memory serves me correctly, which was printed "Property of L. Candee & Company."

Q. Nothing further than that?

A. I would have to appeal to somebody else on that.

Q. That was put there while Hotchkiss, the custodian, was in possession?

A. Put there after he took possession.

Q. How long it remained you cannot say?

A. I cannot say.

Q. Did you ever see that sign at that place or any other place after the custodian was discharged in 1893?

A. I do not think I ever saw it at that place, because I do not think I was ever in the building of Fargo & Co. during the balance of the year.

Q. Did you ever see it at any time after you first saw it when the custodian was placed in charge?

A. I never saw it after the time of that visit in July, but I may have seen it several times during that visit.

Q. In July, 1893?

A. Yes; July, 1893.

Q. Did the Fargo Company give its notes to the rubber companies for those consigned goods—its promissory—negotiable promissory notes?

A. Notes were given by the Fargo Company—you now refer to the business of 1893?

Q. Yes.

A. Notes were given by the Fargo Company to L. Candee & Company purporting to cover the amount of goods that they had sold. I do not think there was great care exercised. I presume sometimes it would not cover—I presume sometimes they did not exactly cover every little item.

Q. Did the L. Candee & Company ever examine the sales records of the Fargo Company after 1893 to ascertain the quantity of goods sold, the method of selling, or the quantity on hand?

A. The quantity on hand was examined—I do not understand what you mean by the sales record.

Q. It is to be presumed that the Fargo Company kept a record of the sales they made of these goods which you term consigned goods. Did you ever examine any such record?

A. From time to time an examination was made of the record

which they kept showing sales daily from month to month which they kept for purposes of comparison.

Q. Do you personally know of that fact?

A. I do—I have seen it.

Q. That such a book was examined?

A. It was a big sheet of paper.

Q. Did you personally examine them?

A. I did; not regularly—

Q. What years?

A. Not after, if my memory serves me right, 1893.

Q. When you say that the judgment notes which were given to L. Candee & Company in 1893 were paid, I understand you correctly, do I?

A. They were surrendered, and therefore I assume were paid. I did not handle the details of the business of the Candee Company then, but they were surrendered and I presume they were paid; in fact I know they were.

Q. Is it not a fact that the mode of the business between the Fargo Company and the Candee Company continued after 1893 as it had been carried on before, that is, the Candee Company continued to ship them large quantities of rubber goods and the Fargo Company continued to pay them large sums of money for goods sold?

A. Yes.

Q. Was there ever any time during the year 1893 that the indebtedness of the Fargo Company to L. Candee & Company was less than it was in July, 1893?

A. I cannot answer that question—I do not remember.

Q. Is there anything in your memory which would lead you to believe that the mode of doing business between the parties was materially altered after July, 1893, up to January 1, 1895?

A. I cannot answer, Mr. Newman, for the reason that the selling agent, my assistant, after a certain length of time, did business with them, of course under my direction, but I should assume that the same method that was inaugurated in July, 1893, was continued.

Q. You supplied all their wants?

A. Practically, yes.

Q. You have said that after May, 1895, when this written agreement was executed, L. Candee & Company sold no merchandise to Fargo & Co.; is that correct?

A. I have.

Q. Did L. Candee & Company after May, 1895, have any other

Testimony of Chas. L. Johnson.

business dealings in the way of selling property or merchandise to the company?

A. They sold them no merchandise.

Q. And sold them no rubber goods and nothing else so far as you knew? You are sure about that, are you?

A. Yes, practically; it might have been a dollar or two.

Q. But matters of no consequence?

A. No consequence.

Q. Was L. Candee & Company in May, 1895, swallowed up in any way by the United States Rubber Company, or did it cease doing business?

A. It ceased selling rubber boots and shoes then. So far as the corporation of L. Candee & Company was concerned, it had no business relations after April or May, 1895, with the Fargo Company.

Q. Then what occurred in 1896?

A. How do you mean?

Q. Was your confidence in the Fargo Company and its managers and owners the same in January, 1896, that it was in July, 1893?

A. Yes, sir.

Q. Had anything occurred between those two periods to lessen your confidence in the concern?

A. Between those two periods, no, sir.

Q. When you came to Chicago in January, 1896, did anything occur in Chicago after your arrival to lessen your confidence in the Fargo people or the Fargo concern?

A. Nothing occurred at all; indeed, I think after my arrival here my confidence was increased a little bit by the evident determination of the Fargos to reduce expenses, carrying forward the business with less and less expansion, and I believed that if they carried out their proposed plan they would move forward successfully.

Q. In July, 1893, you were opposed to the Fargos giving judgment notes and no judgment notes would have been given at that time to secure the company you represented if the Metropolitan National Bank had not insisted upon such judgment notes; is that true?

A. It was due to their insistence that the judgment notes were given.

Q. What was it that happened or occurred, or crossed your vision, in January, 1896, that made you so insistent on being

absolutely secure beyond all possible danger and caused you to take the precautionary measures which were in fact taken? Testimony of Chas. L. Johnson.

A. Particularly the advance, the assistance of $50,000 new money to tide over temporary difficulties.

Q. Anything else?

A. No; I do not think of anything.

Q. Did you say to Mr. Beale during those interviews that your people must be protected both for the $50,000 to be advanced and the old indebtedness beyond all possibility of loss or danger?

A. I do not remember the languarge, but to that effect, if I advanced the $50,000.

Q. Were you solicitous about the protection as to the $50,000 or did the solicitude extend to and cover the old indebtedness?

A. Both.

Q. Did you not, when you first came to Chicago, or during your stay in January, 1896, insist or request the Fargos to secure the old indebtedness to the companies you represented, without advancing any additional moneys, and did not Charles Fargo say to you that if he did that—that he would not do that, but would treat all the creditors alike?

A. To that effect, yes; I do not remember the language; perhaps I can say that I said to him when he found himself in this pressing necessity and said that he must have money for these pressing needs, and I refused it, I think that I added that if you do not raise the money, and these pressing wants bring you to the end, at this time, you should secure or prefer the rubber companies; and I think he made substantially the reply; indeed, I read it somewhere last night, I do not know where, that he saw no particular reason why they should be secured, or something to that effect.

Q. Did he also say that he preferred treating all the creditors on an equality?

A. Words to that effect.

Q. Was it then after Charles Fargo had made that statement to you that you concluded to make the advance?

A. I cannot say yes to the times of the conversation; they were spread over three days; but I desired, for reasons stated, that the concern should go on, believing in their possibilities in the future.

Q. When you requested the Fargo Company to protect your people to the exclusion of the other creditors, was it your wish that the Fargo Company should continue in business?

A. I was.

Testimony of Chas. L. Johnson.

Q. How did you expect that to happen, when they told you that they were in absolute need of $25,000, or they would have to shut up?

A. I presumed there was other money available which they might have borrowed.

Q. You were then looking solely to the security of your people, were you not?

A. And the continuing distribution of goods.

Q. How did you expect them to continue unless they should secure from you or somebody else the advance they required?

A. I hoped that somebody else would be found ready to do it.

Q. You were not especially interested in that at that time?

A. Especially interested in advancing the money?

Q. Yes.

A. No, sir; except as it meant a continuation in business.

Q. Did you—seriously speaking, Mr. Johnson—did you expect the Fargo Company to be able to go on in business if they secured the people you represented, and without your advancing them any money?

A. I do not think the point came up in my mind like that.

Q. Would not that naturally occur to you when you were telegraphed to come to Chicago because the Fargo Company was in pressing need of immediate help?

A. I can only state in a general way; my sole object and end was a two-fold one; it was to secure a continuing business to them—to make a continuing business as far as proper assistance would do it and proper protection to my people.

Q. But your primary object was to secure your people, was it not?

A. Naturally.

Q. Is it not a fact that when the Fargos refused to secure your people without an advance that it was then you made up your mind to make those advances?

A. I do not think the one followed the other like that, sir.

Q. Did not?

A. I should say not.

Q. Had you made up your mind to make the advance before the Fargos had refused to secure your people?

A. I had not. The question had not arisen.

Q. When the subject of chattel mortgages was discussed who was present?

A. Mr. Beale, certainly, Mr. Charles Fargo, certainly; I am inclined to think Mr. Sadler and Mr. Cratty.

Q. Thomas Cratty?
A. I do not know; the one who appeared, whatever his first name is,
Q. What was said about a chattel mortgage?
A. I do not remember that very well, except I think Mr. Cratty and Mr. Fargo objected to it on account of some kind of publicity and that Mr. Beale and Mr. Sadler and myself on our part thought it was not a practical thing to do, and it was almost instantly dropped—the discussion of it.
Q. Why did you three gentlemen think it was not practicable?
A. I don't know why the other gentlemen thought so, but my idea of the chattel mortgage was such that I thought it was difficult to maintain on a moving business, with goods moving in and out, but that point was left, I think, more particularly to Mr. Beale and Mr. Cratty.
Q. But what was the discussion at that time?
A. I cannot remember the details of that, sir.
Q. You cannot recall it?
A. No.
Q. Of course the chattel mortgage would have to be placed on record; you know that, Mr. Johnson?
A. I assumed so; I am not thoroughly acquainted with Illinois methods.
Q. The $50,000 was advanced in what way by the Candee Company? What was the machinery employed?
A. The first $10,000 furnished here by me was by draft, if I remember correctly, on the Candee Company, which I handed Mr. Beale, and I think through the instance of some bank turned into such funds as were usable here. If I remember correctly, the other $40,000 was sent in checks by L. Candee & Company, one or two of them to Mr. Beale, who handed them to Mr. Fargo, and were bank checks; that is, we would take our own Candee check to the Candee bank and secure their check and send it on here in New York funds.
Q. Was the Fargo Company at that time indebted to the Candee Company?
A. At what time?
Q. At the time this new loan was made, in January, 1896?
A. They were.
Q. To what extent, in round numbers?
A. Between $44,000 and $45,000.
Q. Out of what did that indebtedness arise?
A. That indebtedness was represented by notes—

Testimony of Chas. L. Johnson.

Q. No; out of what did it arise?

A. Sale of goods by the Candee Company to the Fargo Co pany.

Q. Prior to April, 1895?

A. Prior to April, 1895.

Q. Why was not that indebtedness paid prior to Janua 1896?

A. Because, following our usual custom when any large debtedness had accumulated against any one corporation, allowed them to give notes covering a period of time with average, short and long—some of them would be extended mo months and some of them would be short.

Q. Was not the indebtedness due from the Fargo Compa to the Candee Company long prior to January, 1896?

A. I believe the date would be December 15, 1895. I am thi ing of the business of the year, after April 1st; it would be d some time in the summer of 1895.

Q. As a matter of fact, that indebtedness from the Fa Company to the Candee Company which matured in June, 18 was extended over a period running far into the middle of t year 1896, was it not?

A. You are asking me some details now with which I am n familiar.

Q. Is Mr. Sadler more familiar?

A. No; he is not; if my memory serves me, however, th were some complications about the account, as to how much w owing to us, and that the settlement—the figures—were n determined until November of 1895.

Q. Why was not that indebtedness paid when the figu were determined, and why was it extended over the year 189

A. Because it was our custom to accommodate our custom —to extend an indebtedness for a time.

Q. The real reason was the Fargo Company was not able pay it; is not that true?

A. I presume they were not able to pay it all at one time.

Q. Or any considerable portion of it; is not that true?

A. I cannot answer, but if so, we did not know it.

Q. You people wanted your money?

A. Well, I do not know about that, sir; we are sometim very content to take notes with six per cent. added and disco them.

Q. Wasn't it true in this case?

A. I cannot answer.

Q. When was this indebtedness which matured in June, 1895, and the details of which were settled in November, 1895, settled by note? When were the notes given?

A. I cannot answer that, sir; but I think the last of November, 1895.

Q. Do you know what period the notes covered?

A. No; I do not know the period of their average, because some of them very likely would have been payable immediately in December, and some further along—I cannot answer.

Q. Why was it that the Candee Company, which had wholly discontinued doing business with the Fargo Company in April, 1895, made this large loan of $50,000 to the Fargo Company in January, 1896?

A. I suppose I answered that, sir; in order to aid the Fargos to meet certain engagements—certain maturing obligations, and continue their business.

Q. The Candee Company was not selling the Fargo Company any merchandise—was not making any money out of it?

A. I perhaps understand you better now. There was a desirability on the part of the Candee Company that their goods should be distributed by their selling agent, which is the United States Rubber Company.

Q. In fact, the two companies are practically one?

A. The United States Rubber Company has acted since April, 1895, as the selling agent of the Candee Company; they are mutually interested in selling; that is, the Candee Company in having them manufactured and the United States Rubber Company in making the sales.

Q. That is the reason the Candee Company made this advance of $50,000 in January, 1896?

A. That, combined with the fact that their indebtedness to me was to be secured, of which you have asked me.

Q. How does it happen that the United States Rubber Company made no advance in January, 1896, and the Candee Company carried the entire burden?

A. I cannot answer except to facilitate matters it was arranged between the Candee Company and the United States Rubber Company that the Candee Company should do it.

Q. Mr. Johnson, is it not a fact that the very $10,000 which you advanced on the day you left Chicago in January, 1896, on this deal, was used to pay some of the notes then maturing belonging either to the United States Rubber Company or L. Candee & Company?

Testimony of Chas. L. Johnson.

A. I cannot answer, sir.

Q. Is it not a fact that the greater part of the $50,000 that was advanced by the Candee Company in 1896 was used to pay its own maturing notes?

A. I cannot answer that, sir.

Q. Why cannot you answer that?

A. Because I cannot follow money into the treasury of the Fargo Company and out again.

Q. Is it not a fact that this $50,000 was advanced by the Candee Company in substantially this way—the Fargo Company executed a series of small promissory notes, handed them to the Candee Company or the United States Rubber Company and they had them discounted and remitted the proceeds of the discount to the Fargo Company?

A. No, sir.

Q. That is not true?

A. Not true.

Q. Is it not a fact that the Fargo Company executed either to the United States Rubber Company or L. Candee & Company a series of small promissory notes, or five $10,000 notes, which the Candee Company had discounted, or the United States Rubber Company had discounted, and the proceeds thereof were remitted to the Fargo Company?

A. No, sir.

Q. Is it true that the Fargo Company did execute and deliver to the Candee Company or the United States Rubber Company five $10,000 notes?

A. Yes, sir.

Q. What did the Candee Company do with these notes?

A. Eventually, in the course of business, I presume they were discounted.

Q. Who paid those notes when they matured?

A. Now you are coming to details which Mr. Sadler can give you better than I can. I have not followed the details since January 6, 1896.

Q. You know nothing about that?

A. No; I do not keep track of the money that comes in and goes out on account of maturing indebtedness and that sort of thing.

Q. Do you know how much money the Fargo Company paid L. Candee & Company from January to August, 1896?

A. Accurately, I do not, but it is between $44,000 and $45,000

Testimony of Chas. L. Johnson.

the indebtedness which existed in January that I mentioned, and also $15,000 on the $50,000 which had been advanced.

Q. Who made the application when moneys were remitted by the Fargo Company to the Candee Company?

A. I do not understand the question, "Who made the application?"

Q. Between January and August, 1896, the Fargo Company owed the old indebtedness which had arisen from the sale of merchandise by the Candee Company to the Fargo Company, and also the Fargo Company was indebted to the Candee Company on account of advances made after January, 1896. Now, when the Fargo Company made remittances, how were those remittances applied?

A. If my memory serves me, the $44,000 and odd dollars which the Candee Company owed January, 1896, was represented by notes of the Fargo Company; the Fargo Company, in remitting, remitted the amount of these notes upon their respective due dates.

Q. Did the Fargo Company make any remittances to meet these notes which they gave the Candee Company in January, 1896, for that loan?

A. I think Mr. Sadler can inform you.

Q. Isn't it a fact that many of these notes matured and were not paid?

A. The $10,000 notes?

Q. Yes.

A. They were not paid.

Q. They were held by the Candee Company or taken up by the Candee Company and held as overdue paper?

A. New notes were given in their stead.

Q. There was an extension; isn't that true?

A. It changed the form of the credit; that is, they were practically extended; yes, sir.

Q. Why was not the money that was remitted by the Fargos between January and August, 1896, applied upon those five $10,000 notes instead of the old indebtedness?

A. Because it was remitted by them in detail to meet the indebtedness on the old notes.

Q. Are you sure about that?

A. I think so.

Q. Do you know anything personally about that?

A. No; I do not; but that was the course of procedure and I presume it went for that debt.

Testimony of Thos. L. Johnson.

Q. But you do not know personally, do you?

A. I was not present in the office when these remittances were received.

Q. And you have no personal knowledge of the letter of advice that accompanied the remittances?

A. No; I have not.

Q. What quantity of merchandise did the United States Rubber Company take from the possession of the Fargo Company in August, 1896?

A. You would have to ask Mr. Sadler as to that.

Q. You have no knowledge?

A. I have no knowledge.

Q. You do know, however, that a large quantity of merchandise was so taken?

A. Yes, sir.

Q. What relation, if any, has Frank Fargo with any of the officers or directors of L. Candee & Company?

A. I know of none.

Q. Is not Frank Fargo, or some of the Fargos, related by marriage to some of the officers or directors of L. Candee & Company?

A. I will tell you what the relationship is; he married the daughter of the selling agent that left us in 1887.

Q. No other relation?

A. I know of no other.

Q. When the Fargos furnished you data relative to the condition of the company in January, 1896, did you preserve that data?

A. I did not.

Q. What has become of it?

A. You will have to ask Mr. Sadler that, he having that in charge; he received it and has it, if any was kept.

Q. Mr. Johnson, you wish us to understand that a merchant, a man dealing with large affairs exactly as you have, in many years, would not be able to examine the books accounts of a concern like the Fargo Company and determine by a cursory examination of the ledger whether the accounts were dead or live accounts by the dates?

A. Certainly not.

Q. Could not?

A. No.

Q. Did you make any examination at all to ascertain whether the $200,000 or $300,000 of book accounts were old or new accounts

A. I did not.

Q. Did you ask that question?

A. Oh, yes.

Q. Of the Fargos?

A. Yes, sir.

Q. What did Charles Fargo say to you as to whether they were live or dead accounts?

A. I have no distinct recollection, but my impression is that under the stress that I put upon him in regard to eliminating everything of doubtful character, he made a cursory examination and struck off a percentage of what he had called accounts receivable, but I cannot answer more definitely than that.

Q. Did you ask for a trial balance of the Fargo Company, taken at the close of the year 1895?

A. I do not remember the date of it; we saw a copy of what purported to be their trial balance on what I believe was January, 1896. What the date of it was I do not know.

Q. At that time did you go through the house to look at the merchandise?

A. No; I did not.

Q. Did anybody for you?

A. I cannot remember that anybody did, but when you examine Mr. Sadler you might ask if he did, but I do not remember.

Q. You and Mr. Sadler made no personal examination whatever of the statement of assets and liabilities which the Fargos furnished you on a slip of paper?

A. Except we examined it there as it appeared, as put before us by the Fargos there, and discussed with the Fargos their idea of the valuation.

Q. What is your recollection now as to what the margin was between assets and liabilities at that time?

A. It is my impression that the first statement that they presented to us indicated that there was a surplus of $150,000, but I am not clear about it, sir.

Q. You do not wish to be quoted—you do not wish that statement to be quoted as being correct?

A. Just a moment, sir; you see, I am thinking of 1893—I am thinking of their several statements they put before us, so I would not quote any particular one in question; the matters pertaining to figures and so forth, the financial part of it, was rather left to Mr. Sadler's examination.

Q. Were you willing in January, 1896, that the Metropolitan National Bank should be secured as well as the two rubber com-

ettmorey of
s L. Johnson.

panies, or did you insist that it should not be secured, but that all the security should go to the two rubber companies?

A. I do not think I insisted.

Q. What did you do about it?

A. I completed the arrangement outlined, and I think it was Mr. Charles Fargo that did not wish the bank secured, if any one wished it.

Q. Why did it occur to you or your counsel, Mr. Beale, to tie up the Fargos by controlling the board of directors? What was it that occurred at that time to make you suspicious of their fidelity to you?

A. I was in no way suspicious of their fidelity.

Q. Why, when did you do that which a man only would do if he were suspicious of their honesty and fidelity, by taking away from them the control of the board of directors, on the part of your company?

A. I think the suggestion was made by Mr. Fargo himself in order that we might be convinced that we should have the best security, if we furnished them the money to tide over what he believed to be only a temporary trouble.

Q. Did you or Mr. Beale in those interviews manifest any feeling that you were not satisfied or that you had any fears on that subject that led Charles Fargo to make that proposition?

A. I do not think so—I think I manifested the utmost confidence in Mr. Fargo, because I felt it.

Q. Can you explain why it was that Charles Fargo offered to surrender and did surrender control of the Fargo Company to the two rubber companies, when they did not ask it or even suggest it?

A. He was so anxious, in my opinion, that we should help to tide over what he thought was only a temporary condition, and he had so much confidence that he could pull the business out that he was willing to do almost anything.

Q. Is that the only explanation you have to give?

A. As the suggestion came from him, I would assume that would be the reason for it.

Q. Have you any other reason to give?

A. I have not.

Q. Charles Fargo insisted upon having the arrangement between the two rubber companies and his concern reduced to writing with extreme particularity, did he not?

A. Perhaps your word "insisted" is too strong; he desired such memorandum of the arrangement.

Q. Why did he request that form used—that elaborate form, when he had such unbounded confidence in the two rubber companies and in his own ability to pull the Fargo Company out of the hole?

A. I cannot answer that; I understand that Mr. Charles Fargo changed his own mind of his own volition.

Q. And you are quite sure that the two rubber companies did not insist upon having possession and control of the Fargo Company, so that the Fargos could not execute judgment notes or give preferences to anybody else without consent of the company?

A. The rubber companies insisted upon security and protection, and left it with Mr. Beale to get security. What Mr. Beale insisted on can only be judged by the results and his testimony.

Q. Isn't it a fact Mr. Johnson, that you understood before you left Chicago in January, 1896, that the control of the Fargo Company would be in the hands of Mr. Beale as your counsel?

A. I understood that the arrangement that had been discussed here would be carried out if it could be carried out satisfactorily to Mr. Beale.

Q. And that arrangement would give the two rubber companies control of the Fargo Company as far as the board of directors is concerned and the secretary and treasurer?

A. I do not know what you mean by "control;" the board of directors was to consist of a certain number of members nominated by Mr. Beale.

Q. The treasurer was also to be nominated by Mr. Beale?

A. I do not think that was mentioned before I left as to the secretary and treasurer.

Q. You mean you have no recollection?

A. I have none, and I think it was not.

Q. So far as you know, did the rubber companies ever repudiate the arrangement made by Mr. Beale?

A. They did not.

Q. Do you know anything that occurred in July and August, 1896?

A. No; I do not.

Q. You have no personal knowledge as to what occurred during those two months?

A. I was away from New York at that time.

Evidence taken before Master.

Testimony of Chas. L. Johnson.

Re-direct Examination by Mr. Beale.

Q. Mr. Newman asked you why you were so particular 1893 to establish the title of the Candee Company to the g in the hands of the Fargo Company. That was largely d under my advice, was it not?

A. I consulted you in relation to it, sir, and the metho carrying it out.

Q. What was Mr. Keith threatening to do if he could have judgment notes?

A. Threatening to bring proceedings against the Fargo C pany.

Q. To bring suit?

A. Yes, sir.

Q. Do you remember whether he stated he would sue, e if he lost every dollar that the Fargo Company owed his l unless he was given judgment notes?

A. Yes.

Q. He stated he wanted to have that indebtedness all clea up at the end of the year?

A. Yes; he was just then smarting under a remark that h been made.

Q. The remark to which I referred in your direct exami tion?

A. Yes.

Q. And it was in view of his threatening attitude and da gers that might come from that, that I desired to have you h protected at that time?

A. It was.

Q. The transaction of 1893, to which we have referred, m no particular difference in the dealings and relations betw the Candee Company and the Fargo Company, did it? The bu ness went on as before?

A. In relation to selling them goods?

Q. Yes.

A. No, sir.

Q. Had the Fargo Company in any way any relation to t change of business methods in April, 1895, by which the Can Company retired from business? Had that change any refere in any way whatever to any of the Fargos any more than other people?

A. None whatever.

Q. Its acts had nothing to do with the Fargos?

A. Nothing at all.
Q. It was a general change of its business methods?
A. It was universal.
Q. Was there any special reason why the Fargo Company was asked to keep the consigned goods separate in any special separate floor or compartment under their direction?
A. At what time?
Q. In 1893 and thereafter, whenever they were requested?
A. No, sir.
Q. It was usual to ask consignees to keep consigned goods on a separate floor or separate location, was it not?
A. Generally, that they might be kept by themselves, so that it might be easily seen apart from goods owned by the consignee.
Q. Did the Fargo Company ask for any money assistance in this?
A. They did not.
Q. There was no suggestion of anything of the kind, was there?
A. No.
Q. When you stated in 1896 that you would advance the money and told me that you would advance the $50,000 on absolute security, was the reference in there primarily to absolute security for the entire debt, or absolute security for the $50,000?
A. The entire debt, sir.
Q. Do you remember riding with me in a cab and my saying to you that the $50,000, as money advanced, would be absolutely safe?
A. I do not remember it at that time. I do not remember the particular time or place; I remember the remark being made, but cannot identify the time.
Q. Do you remember saying to me that you had necessarily a board of directors that must be satisfied?
A. Yes; that was ever before me.
Q. That is, you had a board of directors that would have to be satisfied about your advance of $50,000 of their money?
A. I am afraid I remarked that more than once.
Q. Your relation with the Candee Company was much more that of master in control than it was with the United States Rubber Company, wasn't it?
A. Oh, yes.

Testimony of Chas. L. Johnson.

Q. Was not that one of the principal reasons of your maki the advance through the Candee Company?

A. Yes; I presume it was. It certainly would have been so reference to furnishing money immediately here, and if I a member correctly, the $10,000 being furnished by me here could not furnish it in any other way than by the Candee Co pany.

Q. Then another reason primarily might have been that t Fargo Company used such a large proportion of Candee Company's goods—the goods Candee manufactured, I mean such a large proportion of their own goods?

A. I have already indicated that would be a reason that t Candee Company would step forward at such a time.

Q. Was there any arbitrary demand for preference on the part to the Fargo Company before you decided to make this a vance?

A. In 1896?

Q. In 1896?

A. There was not.

Q. Was not the suggestion made by you, and was not th the sole suggestion, that you wanted that preference in or they failed to get the advance and ultimately had to go to t wall—that is, it was a suggestion based on that contingen was it not?

A. As near as I can recall my language to Mr. Fargo it w that in view of our relations, if it was necessary they sho fail, I felt they should prefer us.

Q. And that was all that was said, substantially, in th way?

A. To which Mr. Fargo made the remark which I have r ported.

Q. There was no extended conversation on the subject, t there?

A. No.

Q. Do you know about the surrender of the judgment no for $44,900?

A. I do not.

Q. Was there anything unusual or extraordinary in an all ance by the Candee Company to the Fargo Company of so mu of an extension on an indebtedness of about $44,000?

A. To fully explain that, I think one would have to be i formed of the custom of the trade, which is that rubber bo and shoes are sold by jobbers payable at a certain time, and t

ections come in from time to time, some of them are delayed, and many of them do a much larger business than the amount of their capital, getting extended time, otherwise not able to make their collections promptly, the rubber companies as a rule have allowed that indebtedness to mature at different times in small amounts, carrying them forward some months. Now, what is the question?

Q. Whether it was rare or exceptional to grant such an extension to the Fargos?

A. To them particularly?

Q. Yes; to them particularly?

A. Extensions of that character had been granted more or less for ten years, as their business made it necessary, the sale of rubber boots and shoes and collection of accounts.

Q. And how about other customers—hadn't there been such extensions to other customers?

Mr. Newman: Objected to outside of Chicago.

Mr. Beale: The custom of the business of Chicago I was asking about.

A. In Chicago and elsewhere.

Q. That is, it was not unusual to grant such long time?

A. No.

Q. Do you happen to know anything about the maturity of the notes given to the United States Rubber Company a little after January 1, 1896—how long time was given on some of those?

A. I do not.

Q. Do you recall whether some of them did not run to the latter part of 1897, a year and a half?

A. I cannot recollect—I do not think I ever saw them or a list of them.

Q. In those interviews at the Auditorium Annex in January, 1896, wasn't there something said to you by the Fargos about the selling season for their "ball bearing shoes," coming on in the spring, and that they expected to realize large amounts?

A. Yes; it strikes me that it was coming on immediately and they stated that they had $50,000 profit in it.

Q. For that season?

A. Yes.

Q. And this advance they wanted for only a short time?

A. I think they gave me the impression that the company confidently expected to be able to meet that advance as early as May.

Evidence taken before Master.

Testimony of Chas. L. Johnson.

Q. Ultimately July was fixed to go into the written agreement, wasn't it?

A. Practically six months' time was allowed them in order to do it.

Re-cross Examination by Mr. Manning.

Q. How many of these ball-bearing shoes had they already manufactured in January, 1896?

A. I could not tell you.

Q. Did you make inquiry?

A. No; I did not.

Q. How much material did they have out of which to make the ball-bearing shoes?

A. Of that I have no knowledge.

Q. Did you make any inquiry about it?

A. Separate from other material?

Q. Yes.

A. No, sir.

Q. Did they have any material on hand so far as you knew?

A. Material was represented in their statement.

Q. Did you see it inventoried?

A. In detail?

Q. Yes.

A. No, sir.

Q. Was there one taken at that time?

A. I presume—

Q. No; not what you presume—did you see an inventory of actual merchandise?

A. I did not see any.

Q. Did you make any inquiry as to how long before January, 1896, an actual inventory had been taken of goods and material on hand?

A. The statement submitted—

Q. No, no; did you make any inquiry as to when their last actual inventory was taken prior to January, 1896?

A. I asked the date of the statement which they put before me representing that inventory.

Q. Did you make any inquiry as to when the actual inventory of merchandise and material on hand was taken prior to January, 1896?

A. I do not know, sir, how to answer, except to say I inquired the date of the statement which represented the inventory.

Testimony of Chas. L. Johnson.

Q. I do not ask you about the statement—those are easily made; did you see at any time you were here an actual inventory of the actual number of cases of goods they had on hand and material they had on hand on any day prior to January, 1896?

A. No, sir.

Q. Did you ask if they had such an inventory?

A. I think not.

Q. Did you discuss with them in any way or manner as to how they were to obtain material out of which to make ball-bearings shoes out of which such large profits were expected?

A. No, sir.

Q. That was not discussed?

A. Not in my presence.

Q. Was any provision made by you or the Fargos as to how they were to obtain material for the prosecution of their future business, outside of rubber goods?

A. I cannot say that it was in detail, sir.

Q. Was there any in substance?

A. The effect—

Q. No; not the effect; what conversation, if any, did you have with either of the Fargos as to how they were to obtain the material, the leather and so forth, necessary for the manufacture of their business thereafter?

A. They stated to us, if I remember correctly, that they should collect certain moneys each month to be used in their business, and that with the addition of the money to be advanced would give them continuous working capital.

Q. Mr. Fargo has testified in this case that the money realized was to be paid on the old indebtedness; was that your understanding of it?

Mr. Beale: I do not think he has so testified.

A. You mean money realized from collections?

Q. Yes.

A. As apart from any other money—separate from money advanced them?

Q. Yes.

A. I do not remember that, sir, but I do think I remember that I said that the old indebtedness to the Candee Company should be promptly met at maturity.

Q. Well, at the time you advanced this money isn't it true that the Candee Company, through you, took five $10,000 judgment notes?

A. No, sir.

Testimony of Chas. L. Johnson.

Q. If the record so shows, that is not true, then, is it?
A. Five $10,000 judgment notes?
Q. Yes.
A. I have no knowledge of it.
Q. Did L. Candee & Company take any judgment notes from C. H. Fargo & Co. in January, 1896, when you were here?
A. I think so, sir.
Q. What were they?
A. I should have to appeal to the record.
Q. The transaction was through you, was it not?
A. No, the transaction was made after I went from here.
Q. Did they surrender any of the former notes they held when they took the judgment notes?
A. I think not.
Q. Then during the time they held the judgment notes, until the old indebtedness was paid, they held the plain notes of the company as well as the judgment notes, did they not, for the same indebtedness?
A. I do not think the Candee Company held the judgment notes; I never saw a judgment note. The judgment note was held either by L. Candee & Company or Mr. Beale during that time.
Q. Isn't it a fact that from January, 1896, up to the time that the indebtedness was reduced that was owing by the Fargo Company to the Candee Company, that the Candee Company held the plain notes of the Fargo Company and the judgment notes of the Fargo Company for the same indebtedness?
A. I assume that one was held against the other, sir.
Q. Well, did they hold plain notes and judgment notes for the same indebtedness at the same time?
A. They held on January 6—
Q. Then they held notes not yet matured, did they not?
A. They held on January 6th plain notes.
Q. For how much?
A. Between $44,000 and $45,000.
Q. And at the same time they took judgment notes for like amount?
Mr. Beale: One judgment note as collateral.
Mr. Manning: One judgment note as collateral?
Q. Being prompted by counsel, can you answer?
A. I have said, sir, it was against the other notes.

Mr. Beale: There is no question about the fact; we have always conceded it. Testimony of Chas. L. Johnson.

The Witness: I thought counsel understood me to say a few moments ago that one was against the other.

OUSTON M. SADLER, Jr., called as a witness on behalf of defendants, being first duly sworn, was examined in chief by Mr. Beale, and testified as follows: Testimony of Houston M. Sadler.

Q. You are connected with the United States Rubber Company?

A. Yes, sir.

Q. What is your position?

A. Assistant treasurer and manager of the credit department.

Q. Were you so connected and in that position in January, 06?

A. Yes; with the exception I was not assistant treasurer at at time.

Q. You were out here in that month and year with Mr. Charles Johnson when an arrangement was made with C. H. Fargo Co., were you not?

A. Yes, sir.

Q. And were present at most of the interviews, if not all of em?

A. Most of them; I think all of them.

Q. You were present this morning and heard Mr. Johnson stify, did you not?

A. Yes, sir.

Q. Will you state how your recollection compares with the collection and the statements made here by Mr. Johnson?

Mr. Manning: That is objected to.

A. Mr. Johnson's testimony, as I heard it, is practically rrect, except on one point my memory is back a little, that is the point why Mr. Fargo wanted the Candee Company to adance this money rather than the United States Rubber Company.

Q. What do you mean by that?

A. The $50,000.

Q. You mean the reason why it was advanced by L. Candee Company?

A. Yes; the reason why; it was on his solicitation—Mr. argo's, that it was advanced by the Candee Company rather

Testimony of Houston M. Sadler.

than by the United States Rubber Company. As he expresse it, Mr. Fargo at that time did not know me at all. I had neve met him before that time and he knew Mr. Johnson and had hi confidence in Mr. Johnson, and for the reason that he had give him a judgment note in 1893, he expressly solicited that th Candee Company should advance the money; that was the rea son, coupled with the fact that Mr. Johnson was treasurer of th Candee Company and could draw on that company and coul not draw on the United States Rubber Company.

Q. You were more particularly identified with the Unite States Rubber Company than with L. Candee & Company?

A. Entirely so.

Q. When were the judgment notes—the three judgment note —actually given and received by me or by the rubber company if you know?

A. They were made out on January 6th, the day that we le here.

Q. They were actually delivered and received that day?

A. They were actually delivered and received that day befo we left Chicago—that I insisted upon—that I know. Mr. Johns was not present when they were delivered.

Q. To whom were they delivered?

A. I think to Mr. Porter, to be given to you.

Q. No; I mean by the Fargo Company—by whom?

A. By the Fargo Company to Mr. Porter.

Q. Weren't they given to you?

A. They may have passed through my hands and passe right over to Mr. Porter to be taken to your office.

Q. They were delivered by the Fargo Company to you, we they?

A. Mr. Porter was present when they were delivered. I whether he handed them actually to me and I to Mr. Porter would not say.

Q. Where was that?

A. In Mr. Fargo's office.

Q. These were the same three judgment notes unchanged?

A. The three judgment notes; if you wish I will state t amounts.

Q. So far as you know, there was only one set of judgme notes given—the three original judgment notes and no others?

A. That is all I know of—all that I know of.

Q. You were present, were you not, at some of the discussio which took place in an attempt to formulate a written agreeme

A. Yes, sir; I think I was present at all of them.
Q. And you have read over the draft of the written agreement which was prepared and never executed, have you not?
A. Yes, sir.
Q. You may state whether that draft of the written agreement presents substantially the verbal arrangement which was proposed to be made by Mr. Johnson with the Fargo Company?
A. It does, as far as my memory goes, exactly.
Q. At whose instance was that written agreement to be made?
A. At Mr. Fargo's—Charles E. Fargo's.
Q. What was the approximate amount of the indebtedness due by the Fargo Company, owing by the Fargo Company, January 5, 1896, to the two rubber companies?
A. About $185,000; about $45,000 to L. Candee & Company, and about $140,000 to the United States Rubber Company.
Q. When had that indebtedness arisen to the United States Rubber Company?
A. Between April 1, 1895, and January 1, 1896.
Q. Referring to the Candee Company's indebtedness, what payments were made by the Fargo Company upon that existing indebtedness subsequent to January 1st, if you know?
A. That I could not tell you.
Q. Were they made through you?
A. No; not at all. Subsequent to January 6th?
Q. Subsequent to January 6th.
A. Oh, subsequent to January 6th, no; they were made through the Candee Company, right direct to New Haven, not through our office at all.
Q. So you directly did not know of the application of moneys to the payment of any specific notes?
A. No.
Q. Do you know anything about the surrender of one of the judgment notes to the Fargo Company?
A. Yes, sir.
Q. State the circumstances under which that was surrendered to the Candee Company?
A. In April, just before the 1st of May—I think April 27, 1896, I remember, I received a letter from Mr. Fargo—he sent me a set of plain notes to cover the indebtedness to the United States Rubber Company and the Candee Company, and at that time—
Q. He asked for some extension, didn't he?
A. He included in that, as I say, ordinary notes given to take up or extend the $50,000 which he had given to L. Candee & Com-

Testimony of Houston M. Sadler.

pany in five pieces of $10,000 each, and the total amount of the notes sent was $194,000. He then called my attention to the fact that L. Candee & Company had been paid for the notes they held formerly—this $44,000 and odd dollars, and requested that I should write to Mr. Beale and ask him to surrender the judgment note for that amount, which I did. I think that letter you have in the record; that was how we surrendered that judgment note.

Q. The indebtedness to the United States Rubber Company in January was in the form of open account, was it not?

A. Open account.

Q. And it was subsequently represented by notes given by the Fargo Company—plain notes.

A. As soon after April 1st as possible—our fiscal year ends April 1st—the amount was determined upon, and he sent us these notes, some of which ran to November, 1897.

Q. They were extended over various periods?

A. Yes; over various periods, and he wrote me a letter saying that these notes matured at such times as they could conveniently meet them.

Q. Can you remember the amounts of the subsequent transactions in sending of notes and receiving of payments, between the United States Rubber Company and the Fargo Company from January to August, approximately?

A. Yes, sir.

Q. State it if you can?

A. We delivered them from January 6th to August 6th about $24,000 worth of goods, and we received in payment altogether about $19,000 between those dates—$19,400 and odd dollars, to be more accurate.

Q. That was all the money you received from them?

A. Every dollar. And I may say here that the money was received by notes which matured in June, being paid in June and July—there was one in June of $5,000, and two in July, and then after that we received about $5,000.

Mr. Newman: You say that between January 6 and August 6, 1896, you received only about $19,000 from the Fargo Company?

The Witness: Yes, sir; $20,000.

Mr. Newman: That is, in addition to the $44,000?

The Witness: The Candee Company received the $44,000; we did not receive any of that.

Testimony of Houston M. Sadler.

Mr. Newman: When you speak of "we," you mean the United States Rubber Company?

The Witness: The United States Rubber Company.

Mr. Newman: They shipped $24,000 merchandise and received merchandise account between $19,000 and $20,000?

The Witness: For sales made up to January 1st, on the indebtedness that had been incurred between April 1st, 1895, and January, 1896.

Mr. Newman: The $44,000 went to the Candee Company?

The Witness: That was paid to them direct; that did not come through my hands at all.

Q. So that the indebtedness to the United States Rubber Company slightly increased between January and August?

A. Slightly increased, yes, sir; increased about $3,000 or $4,000, with a discrepancy of about $2,000. About $1,500 of this increase in the final statement which we made was for the consigned goods which were not returned.

Q. There were some adjustment and interest in there, were there not?

A. Yes, sir. They returned about $2,000 less than our books showed they had on consignment. They had previously accounted for sales, and our books showed about $2,000 more than they had, which, of course, was accounted for in a going business.

Q. You came out to Chicago, did you not, about the 1st of August, 1896?

A. Mr. Charles E. Fargo and myself left New York on the 1st of August, 1896, which was Saturday; I remember very distinctly because I was sick.

Q. You may state the occasion of your coming here?

A. Mr. Charles E. Fargo telegraphed to Mr. Johnson asking Mr. Johnson to meet him in New York on Saturday, August 1st. Mr. Johnson was out of town, in fact he was driving through the Berkshire Hills, and we did not know his address. I was in the country at the same time, and the office—our office, the United States Rubber Company—forwarded me this telegram, and I met Mr. Fargo at the Holland House, in New York, about 10 o'clock, the morning of August 1st. He then told me that owing to collections being rather poor, and very bad, that he would need about $5,000 or $10,000 during the next month more than they had in sight at that present time, and wanted to go to the bank and ask for an increase of his loan that much, to use the additional money in his running business. I replied to that, that we had no objection providing their condition was the same at that time

Testimony of Honston M. Sadler.

as it was in January. Mr. Fargo then produced a statement, a pencil statement, showing that he was, practically—the firm was—perfectly solvent. I asked him to give me a copy of that statement, which he did. This is the statement made out in Mr. Fargo's handwriting. (Witness produces paper.)

Q. You have the original in your hand?

A. I have the original as he gave it to me at the Holland House that morning. He had it made out on a sheet of paper double the size of that (indicating the paper just produced), and I asked him to give me that statement. He says, "I will do this," and right beneath it he made an exact copy, and he tore off the original, and that is why it is torn across the sheet.

Mr. Beale: I now offer this paper in evidence.

The Master: Said paper is received and reads as follows.

225,000	a c	150.	Rub.	165,000
150,000	Mdse.	150.	Bank	40,000
175,000	Fac.	150.	"	13,000
550,000		450.		218,000
40 % = 220,000		50 % = 225.		
a c	70,000			
Notes	80,000			
	150.			

Given to H. M. Sadler, Jr., by C. E. Fargo, in N. Y., Aug. 1 96.
[Master's mark: " Identified by Mr. Fargo Mch. 22 98. H. W. B."]

The Witness continuing: I told Fargo that under the circumstances I saw no objection whatever to his going to the last and stating the exact condition of our account, that is, that we had given us judgment notes, provided that our counsel saw no objection. Of course, at that time I had not consulted Mr. Beale, and that was the occasion for my coming out that same evening, jumping on the train and coming out here with Mr. Fargo, ariving Sunday evening, and Monday morning visiting Messrs. Isham, Lincoln & Beale's office.

Q Before coming here, you had a little communication over the telephone with Mr. Johnson?

A. Yes; when I got to the office early that morning I naturally, to find Mr. Johnson, as he was interested in the matter, and after telegraphing I found that he had returned that morning to his home at Ansonia, where he has a country place.

I communicated with him over the telephone—gave him the stance of that statement which Mr. Fargo gave me, and some discussion over the telephone he strongly advised coming out here to see Mr. Beale and agreeing to the Metro- tan Bank knowing the full situation. Testimony of Houston M. Sadler.

When did you return to New York?

I returned Monday night—Monday afternoon; 5:30 I left ; I was only here about twenty-four hours.

Did you see me or see Mr. Porter while you were here?

No; you were absent and Mr. Porter was also absent—I Mr. Pierrepont Isham.

Did you make any further inquiries of Mr. Fargo about his rs—talk with him about it while here?

Yes; Mr. Fargo came to your office with me, the office of m, Lincoln & Beale, and in Mr. Isham's presence—Pierre- Isham—I asked Mr. Fargo to substantiate that statement. h he did. I said, Mr. Fargo, if you are in an insolvent con- n or have any idea of making an assignment, I should not like giving assent to this thing, and he absolutely declared were not insolvent and had no idea of making an assign- t, or having judgment notes entered; that with this additional ey which he could obtain from the bank he could pull ugh.

What he asked for was $10,000?

$10,000, yes, sir.

And for what purpose?

To meet current obligations in his business.

And he stated that he expected to continue in business?

Certainly; yes, sir; and it was not intimated but that ything was going on the same as it had been.

And he expected to give judgment notes to the bank and them on the same footing with the rubber companies?

He did, and we consented fully to it, knowing our posi- and that judgment notes existed.

Did you in any way consent to his getting $10,000 at or t that time from the bank for any other purpose that to go ith the business?

Under no circumstances whatever, no; knew nothing of it: as purely and simply to be used in his business.

What was the amount due the United States Rubber pany on the 5th of August, 1896, from the Fargo Company?

According to our books at that time, they showed about

Testimony of Houston M. Sadler.

$143,000 or $144,000; that was after adjusting some interest a so forth.

Q. A little more than the amount of the judgment notes?

A. A little more than the amount of the judgment notes.

Q. Has that ever been paid, or any part of it?

A. Never.

Q. As a matter of fact, Mr. Sadler, that amount was mad by allowing to the Fargo Company a certain percentage of c mission to which they were not entitled, was it not?

A. We allowed them nearly $12,000 which, under the ag ment they signed, they were not entitled to, and we pas ed i their credit on April 1st; that is, the New Haven concern.

Q. Explain that a little, please—this is all in the wri agreement? They were entitled to 7 per cent., an additional centage if they carried out their contract and paid their b

A. According to our agreement they were to be allowed commission of 8 per cent., which they could charge our acco immediately as the goods were sold for our account. On the of April, this is the end of our fiscal year, if they had remi to us in full and carried out all the provisions of that agreem they were to be entitled to what we term a rebate, and is so st in the agreement, of 7 per cent. additional; and that reb which amounted to over $11,000, was credited to their acc under the date of April 1, 1896.

Q. So that the indebtedness, as you have stated it, is a allowing that amount?

A. After allowing that amount. Without allowing that amo it would be that much more.

Q. What was this indebtedness for?

A. For sales made by them of rubber footwear shipped t by us, under our written and signed agreement; not a dollar w charged until they had reported it as sold—not one dollar; sim a memorandum kept of every shipment.

Q. There were no other dealings between the United St Rubber Company and the Fargo Company, were there, exc under these written contracts?

A. None; we made another agreement of April, 1896.

Q. For another year?

A. Another year.

Q. So that all your shipments of goods to them were consi ments of goods?

A. Every dollar; every shipment made was made under t agreement; and the amount of goods on hand was verified

rtain intervals, certain periods, by taking from the amount of ds shipped, as shown by our books, the sales reported by the rgo Company.

Q. What was your understanding when you left Chicago nday, the 3d of August, as to the condition of the business of e Fargo Company?

A. My understanding was that this additional money which ey were to get, which the bank was to advance them, would e them over, well, for an indefinite period, because they thought at after that their collections would take care of all future ligations.

Q. Did you have any idea or see any indication in any way at their failure was imminent at that time?

A. Not the slightest—quite to the contrary—had no idea of it.

Q. You first received that intimation a couple of days later m our office?

A. I did.

Q. And then authorized me to enter judgment at that time?

A. Yes; if that was the case why, that was the only thing to —I think it was a telegraphic communication; in fact I know vas; with Mr. Porter, I believe.

Q. You have also read Mr. Fargo's testimony, as given in the nographer's transcript?

A. Yes, sir.

Q. Read that since you came out here—last night?

A. Yes; I read it—I did read that testimony since I came out e—read it last night and found it substantially correct.

Q. According to your recollection?

A. According to my recollection, I did not see any variations mount to anything material.

Q. In the making of the proposed written agreement in Janu- Mr. Fargo was very particular and strenuous in the condi- s he wanted put in under which judgment should be entered, sn't he?

A. Yes.

Q. When the large amount of notes were sent you in April, unting to nearly $200,000, you say that they were made to er the $50,000 of advance; but the notes were made, were they to the United States Rubber Company?

A. No, sir; they were made to L. Candee & Company.

Q. All of them?

A. Every note that he sent was made to L. Candee & Com- y, because it had been the Fargo's custom in the past to

Testimony of Houston M. Sadler.

make all their notes payable to L. Candee & Company. W
received these notes I sent them back to Mr. Fargo with a
of explanation, explaining that the indebtedness sold wa
the United States Rubber Company and not L. Candee &
pany.

Q. And that the advance was due L. Candee & Compan

A. And that the advance was due L. Candee & Company
I sent L. Candee & Company their notes after he sent
back.

Q. Will you please look at that statement of account, a
will ask you whether this statement was made under yo
rection from the books of the United States Rubber Co
and whether it is correct or not as shown by the account?

A. Yes, sir; this is absolutely correct, according to our b
and explains every item, and I was very particular to ex
there in detail the item of rebate, to show how it was arriv

Q. Let me ask you, Mr. Sadler, whether the indebtedne
the Fargo Company to L. Candee & Company is the same
exclusive of interest, as it was August 5, 1896?

A. Yes, sir; otherwise I would have been informed if it
been reduced.

Introduction of Defendants' Exhibit 19.

Mr. Beale: This is the statement of their account, w
shows the amount Mr. Sadler has testified to as being a
over $142,000. I offer it in evidence.

The Master: Said statement is received and marked Def
ants' Exhibit 19. (See p. 423.)

Cross-Examination by Mr. Newman.

Q. Mr. Sadler, will you kindly mark in ink at the top of th
three pages which Mr. Beale has designated as the acc
which he has just introduced in evidence, so that I can re
the pages, 1, 2 and 3, with your initials?

A. I will. (Witness marks statement.)

Q. Your account shows shipments as well as sales made
the Fargo Company of consigned goods?

A. Sales as reported to us by C. H. Fargo & Co. made by th
of goods consigned by us.

Q. Mr. Sadler, you say that you left Chicago August 5, 9
to return to New York?

A. That is right, sir.

Q. When did you come on again, next?

A. Oh, it was some time after that.

Q. Well, what do you mean by some time—that is a little in- Testimony of Houston M. Sadler.
definite?

A. Oh, it was not for some weeks.

Q. Who attended to shipping back the consigned merchandise that was on hand with the Fargo Company at the time the goods were held by the United States marshal?

A. Our agent, Mr. Allen.

Q. What quantity of merchandise did your companies get back from the Fargo Company after it failed?

A. That I cannot say.

Q. About?

A. About $100,000, I should say. You see as those goods were kept simply on a memorandum, why, I would never see that, because it was not an indebtedness that existed.

Q. You would know in a general way?

A. Yes; it was somewhere about in that neighborhood; about that. I could not say within $25,000 or $30,000, but we only took back the brands that were consigned according to our agreement—that is all. As I say, we fell short $2,000 of what our books showed. There is the amount there our books showed; then, adding to this that much more than they returned, $2,331.68, therefore we charged their account with that as sales, you see, because our books showed that they had on consignment that much more than they returned. When the goods were returned and checked up we found them short $2,300, and whatever it was; you see that is designated to December 15, 1896, because anything sold after April 1st was due that date.

Q. I find on sheet No. 2, marked with your initials at the bottom of the sheet, the following entry or item:

Memo.		
1896.	Credit.	
Aug. 12.	By cash.....	$5,494 50
	By frt.....	90
		$5,495 40

What does that mean?

A. That was money that Fargo had collected for our account after January 6th on goods sold from January 6th up to April 1st.

Q. What year?

A. 1896; and it was given Messrs. Isham, Lincoln & Beale prior to August 6th, as I understand it, Mr. Porter.

Q. No, no; only testify to what is within your personal knowledge on this subject.

Testimony of Houston M. Sadler.

A. That came to Isham, Lincoln & Beale.

Q. Personally, Mr. Sadler, you know nothing about when the money was collected by the Fargos? All that you know is that your company on or about August 12th, 1896, received that amount of money?

A. Yes. I personally know more about it than that.

Q. What?

A. When I came out here the 1st of August, Mr. Fargo admitted that he had used some of the moneys that he had collected for our account, and that he had about that amount left.

Mr. Beale: Special bank account?

The Witness: Special bank account.

Q. What bank?

A. In the Metropolitan.

Q. When did he tell you that?

A. In August—August 3, I think, the day I was out here, the day I was out here; at that time—he agreed to turn that money over—any balance that he had in the bank.

Q. How did he happen to make that confession to you?

A. Because I asked him what he had done with that money he agreed to keep in a separate bank account. On January 6th he agreed to keep a separate bank account for all moneys collected from sales made subsequent to that date. I asked him about how much money he had belonging to us in this special account, and then he explained to me that he had about that much left, although he had collected about $18,000 more than that amount, and asked me would I accept his time notes for that, which we did, thinking they were perfectly solvent that day, otherwise we would not have done so.

Q. Why was he so solicitous about his agreement as to the five thousand and some odd dollars?

A. Because I stated I did not want him using any more of it.

Q. Why didn't you insist upon the return of the $18,000?

A. Because he did not have it there at that time; he had used it in his other business.

Q. All you know was what he told you?

A. But he told me he was using this money in his own business, this $18,000, and had this left, so I asked him to give us a check for it, which he did after I had gone.

Q. That special bank account arrangement by which he was to deposit all moneys collected from consigned goods was made in January, 1896?

A. Yes; was on sales after that date.

Testimony of Houston M. Sadler.

Did you arrange what bank that special account should be ned in?

No, sir; our agreement specifies banks acceptable to us. agreement was made prior to when we came out in January, in January we insisted that he should begin to do that, to this separate bank account which was provided for in our ement.

As a matter of fact, while that provision may be in the ement, do you insist upon it with your customers in Chicago?

In some cases, yes; in other, no; we had not insisted it until he admitted his embarrassment.

In January, 1896?

In January, 1896—his temporary embarrassment.

Up to that time you had not insisted upon it?

No.

Did you take any pains prior to January to find out ther he had done it?

No; because he had signed this agreement.

It is one of those provisions you do not enforce until you the necessity of it?

We had not enforced it up to that time.

It is one of those provisions you enforce or not, as you see Mr. Sadler, isn't it?

Well, practically, yes.

Whenever you begin to feel that a house is a little hard sed or there might be some danger of having your funds , why then you insist upon that clause of the contract being ied out?

This came about through Mr. Fargo's acknowledging tem- ry embarrassment, and we considered it the safest plan, rally.

And you even made that as one of the conditions of the uary arrangement, that your money should be kept separate distinct?

That is a fact and that is a rule.

Do you know whether the money was paid over to Mr. er, this particular money, by check or in currency?

No, sir; I cannot say.

You do not know?

I do not know whether it was by check or currency.

Was there any other concern in the City of Chicago to m you sold rubber footwear that kept the proceeds of the

Testimony of Houston M. Sadler.

sales which it made of your goods in a separate bank account in January, 1896?

A. Yes, sir.

Q. What concern?

A.—Of my personal knowledge, E. G. Stearns & Co., A. D. Wentz & Co.

Q. Any other concern?

A. I recall none others.

Q. Those two concerns were very small concerns, were they not?

A. No, sir; they were large concerns.

Q. E. G. Stearns & Co.?

A. Yes, sir; they sold three times as many goods as C. H. Fargo & Co. did. Their sales amounted to over $600,000 a year.

Q. Did you ever give them any credit at all?

A. The same credit as we gave Fargo—larger credit.

Q. What were the other concerns to whom you were selling largely in 1895 and 1896, in the City of Chicago, selling or not signing?

A. E. M. Phelps, Selz, Schwab & Co., Schnadig Brothers & Co., Guthman, Carpenter & Telling, and others, C. H. Fargo & Co. and C. M. Henderson & Co.

Q. Did you insist upon any of these houses complying with that provision in the contract by which they were to keep the proceeds in a separate bank account?

A. No, sir; we waived it.

Q. You waived it because you deemed them perfectly good, is that right?

A. Not necessarily that; no; it was because they thought it was a great deal of inconvenience.

Q. Mr. Sadler, do you wish us to understand that your companies, or either of them, delivered any merchandise of any kind to the Fargo Company, on consignment or otherwise, after January 6, 1896?

A. Yes, sir; we did, a little.

Q. Please show where these deliveries appear upon the statement of account which you have furnished and which is in evidence as Defendants' Exhibit 19?

A. They do not appear there, sir, for the reason stated, that they were consigned to them and they do not appear until they report sales.

Q. Were any goods ordered on consignment or otherwise by C. H. Fargo & Co. after January 6, 1896?

Testimony of Houston M. Sadler.

Yes, sir.
We would like to have the data?
I will show it to you. Here is a memorandum of every ment that was made them from that date, subsequent to date, on consignment. (Producing statement.)
Were any goods sold to C. H. Fargo & Co. on credit after uary 6, 1896?
Yes, sir.
How much?
About six hundred and odd dollars.
What kind of goods?
Tennis goods.
Is that all?
That is all, because that is the only kind they bought on t; that was not consigned to them. When all the other ship- s were made, as I explained, there was simply a memoran- taken of them until they reported sales, and I think you see some report of sales there after April 1st, on that state- —that is simply a memorandum of the shipments and the e of the goods in gross amounts.
Beale: Many of those were taken back, were they not?
e Witness: Yes; a portion of them: I do not know which m, because we charged up so much to each brand and ted that amount.
I hand you a statement which you have just handed me, ed "monthly statement. New York."
That is simply a memorandum I brought here—it is not a ment I rendered to the Fargo Company.
Let me identify it. "Monthly statement, New York, July 98." Is not that a consecutive statement of the dates and mounts of goods consigned to Fargo & Co. after January 6,

Shipped to C. H. Fargo & Co. on consignment after January a memorandum of the dates of shipment and the brands— y a memorandum.
And the amounts?
And the gross value.
What do you mean by gross value?
Well, it is the price at which they are billed until sold, hey are entitled to take off certain discounts from that they make the sales.
Manning: How much?
Witness: It was fifteen per cent. and eight per cent.

Evidence taken before Master.

Testimony of Houston M. Sadler.

Q. They first took off fifteen per cent. and then eight per c of what was left?

A. Yes; the eight per cent. is the commission Fargo gets.

Q. Is it eight per cent. from the gross amount?

A. Yes, sir; that is all stipulated in the agreement—the pr at which he can get the goods at.

Q. Will you please identify the three sheets by marking th 1, 2 and 3, with your initials?

A. Yes, sir.

Mr. Newman: We offer these three sheets in evidence, dat July 7, 1898, and each sheet being marked with the initials Mr. Sadler, and the sheets being marked "No. 1," "No. 2," a "No. 3."

Introduction of Defendants' Exhibit 20 by Complainant.

The Master: Said statement is received, and although offe by complainant it will, for the sake of convenient compari with the last preceding exhibit, be placed among defendan exhibits, and marked Defendants' Exhibit 20. (See p. 426.)

Q. In that statement of goods ordered on consignment by H. Fargo & Co. after January 6, 1896, we will find all the go that were shipped after January 6, 1896, and such of those go as were not sold you got back after January 6, 1896; is that c rect?

A. Yes. But there were some other goods that you will n charged there—"tennis," which we did not consign to them b sold.

Q. That is the $600 or over to which you have referred in y former testimony?

A. Yes.

Re-direct Examination by Mr. Beale.

Q. Mr. Sadler, I think you stated in your direct testim that the total amount of goods consigned after January 6th w about $24,000?

A. It was a mistake—it was about $18,000. I had the go sold January 6th to March 31st in mind when I made th statement. That was about $24,000.

Q. It is the amount shown here. (Referring to Defendan Exhibit 20.)

A. Yes; the amount shown there.

Q. And the amount you have received from them was ab how much money?

A. About $20,000.

). About the same?
A. About the same.
). After April 1, 1895, the United States Rubber Company was pping rubber goods to a number of concerns in Chicago, was not, besides the Fargo Company?
A. Yes.
). And also to a large number of concerns throughout this tion of the country?
A. All through the country.
). Did you have any special form of contract with C. H. go & Co. different from the form of contract with the others?
. In the State of Illinois?
). In the State of Illinois?
. No, sir; all the same.
). A uniform contract, the same as we have here?
. The blue one.
. And the contract in April, 1896, with C. H. Fargo & Co. the same as the contract with others in the State of Illinois 896?
. Yes, sir.
Both of these contracts were the general forms, examined ne before they were adopted by the company, were they not?
. They were; yes, sir.
Is it not a fact that the provision in there with regard to rate bank account was largely a matter of my invention?
. It was.
I put it into the contract, or it was put in by my advice?
Yes, sir.
To cover all cases?
To cover every case, article 5.
There were no sales of any consequence by the United es Rubber Company to parties with whom you were dealing; goods were all consigned, were they not?
All consigned during that period.
Does the date of the entry of the receipt of that amount bout $5,000, August 12th, indicate the date of the payment he Fargo Company or of the entry upon the books of your pany, when received there?
The date received by us; that is, we always enter any ks or cash or anything on the date that we receive them—on late received by us.
. Manning: Was that received directly by you?

Testimony of Houston M. Sadler.

The Witness: It came through Isham, Lincoln & Be office.

Mr. Tenney: Was the $5,000 shown by that statement a part of the $20,000, which Mr. Sadler has testified to, the amount received?

The Witness: Yes; it is. It is stated right there in memorandum of account here, the amounts received were th $5,000 notes, which were paid June 22 and July 8th and 20th, then in addition to that, these are the three items (indicati put down as received afterwards.

Mr. Newman: Then the total payments received by you a January 6, 1896, amounted to $20,494.50?

The Witness: That is it.

Q. Mr. Sadler, were the merchandise dealings of the Un States Rubber Company with C. H. Fargo & Co. in 1895 and 1 at all exceptional or different from what were their dealings w other concerns in this part of the country?

A. None whatsoever; just the same exactly.

Q. Was there any other change in the manner of these d ings after January 6, 1896?

A. None whatsoever. The only reason there was such small quantity shipped them during that period was, it is t time of year during which very few shipments are made; t bulk of the rubber business is done between, well, about Aug 1st up to November 1st, so that they can have the goods in h to distribute or sell, as the case may be, to their customers.

Q. Before the bad weather of the fall begins?

A. Before the bad weather of the fall, and before wa sets in, and the shipments there after January 6th were al the same in proportion as we made to other customers.

Q. I notice on the statement of account (Defendants' Exhi 19), on page number 1, charges from April 20, 1895, to Decem 11, 1895, of "Merchandise." Please explain what those cha are for?

A. Those are the different items covering merchandise shi them of brands different from those specified in the cons ment agreement. I think that answers the question.

Q. These were actual sales?

A. These were actual sales.

Q. And the goods there charged were not part of the go which were taken back as consigned goods after August 6, 1

A. No part of the goods taken back after August 6, 1896.

Q. Was any part of the goods represented on that statement account taken back after August 6, 1896? Testimony of Houston M. Sadler.

A. Not a dollar, because this statement only covers sales made by them.

Q. And reported?

A. And reported by them.

GILBERT E. PORTER, recalled as a witness on behalf of defendants, was examined by Mr. Beale, and testified as follows: Testimony of Gilbert E. Porter.

Q. Mr. Porter, was any money paid to you or to the firm of Graham, Lincoln & Beale by C. H. Fargo on or about August 5th or 6th, and if so, state the circumstances and the amount paid?

A. Yes, sir; on August 5th or 6th, I think it was on August 5th, Mr. Fargo handed me a check payable to the United States Rubber Company for $5,494.50, and also some notes, I think three notes aggregating about $18,000, and he stated to me that the check represented the balance of money that was in the special bank account, which he had kept, of proceeds of consigned goods, and that the notes represented moneys that ought to be there, but which were not there. In other words, the aggregate of twenty four thousand and some odd dollars, which he paid to me by this check, and these notes represented the balance which should have been then in the special bank account.

Q. What did you do with the money or check thus handed you?

A. I was very busy then in entering up these judgments, and I kept the check and notes there in the office for several days, and then sent them on to Mr. Sadler.

Mr. Tenney: Whose notes were they?

A. The notes of C. H. Fargo & Co.

Q. Just made out then?

A. No; they were all made out—the check was all made out.

Q. I mean dated then, or were they notes that had been issued some time before?

A. My recollection is that they were dated about that time—they were made out by him and brought in to me.

Mr. Beale: The amounts were included in the amounts for which judgment was taken.

Mr. Sadler: These are the notes he agreed to give me when I was here, and I insisted on his paying the balance in cash.

PAGE CUT OFF

Evidence taken before Master.

Testimony of Gilbert E. Porter.

Mr. Beale: Have you the original paper which was executed by the Fargo Company making an assignment of the accounts and bills receivable from that company to the United States Rubber Company? If so, please produce it?

A. I have here the original assignment which was made and executed by C. H. Fargo & Co., by Charles E. Fargo, president on August 6, 1896.

Introduction of Defendants' Exhibit 21.

Q. You are able to identify the signature, are you?

A. I am.

Mr. Beale: I offer this in evidence.

The Master: Said assignment is received in evidence and marked Defendants' Exhibit 21. (See p. 42[illegible].)

The Witness: I will also say that assignments similar in terms for the benefit of United States Rubber Company were made at the same time on the fly leaves of the various ledgers of C. H. Fargo & Co.

Cross-Examination by Mr. Manning.

Q. Did you draw this assignment, or cause it to be drawn?

A. Yes; I think I did; and it was signed in my presence that day.

Testimony of Wm. G. Beale.

WILLIAM G. BEALE, called as a witness on behalf of defendants, being first duly sworn, was examined in chief by Mr. Porter, and testified as follows:

Q. Mr. Beale, will you please state your full name, residence and occupation?

A. William G. Beale; I reside in Chicago, at 12 Washington place, and am a practicing lawyer, a member of the law firm of Isham, Lincoln & Beale.

Q. Please state what relation you or your firm had with the United States Rubber Company and L. Candee & Company in January and February, 1896.

A. In 1896 and prior thereto, and since that date, my firm have been counsel here in Chicago for the United States Rubber Company, and primarily I have been the member of the firm who has given the affairs of that company attention during that time.

Q. Did you have anything to do with the transactions between those rubber companies and C. H. Fargo & Co. in January,

COPY BOUND CLOSE IN CENTER

nd if so, please state fully everything that occurred within your nowledge in respect to these transactions?

A. I had a great deal to do with them, and have had to do ith the affairs of the United States Rubber Company and the andee Company, both in relation to the Fargo Company, both be- re and after January, 1896, and I can state what I have thus ad to do so far as it is material, if desired?

Q. Please state all your knowledge with reference to the ransactions between the two rubber companies and C. H. Fargo Co. at any time, bearing upon the matters in litigation here.

A. My relation to this particular matter involved in the liti- ation began on Wednesday, January 1, 1896, by the receipt of a legram which I have here in my hand from Charles L. Johnson ddressed to me personally, and which appears to have arrived Chicago at 12:40 p. m. of that day, in which he says "Kindly range meet me Auditorium Hotel Annex five o'clock Thursday ight. Important." I went to the Auditorium Annex to meet r. Johnson on Thursday, the 2d day of January, on his arrival om New York. Whether it was exactly at that time or not, I do ot know, but I met him there, and also Mr. Sadler, and had an terview with Mr. Johnson and with Mr. Sadler and with Charles . Fargo and possibly with one or both of Mr. Charles E. Fargo's rothers.

I do not remember whether Mr. Charles E. Fargo was there hen I got there, or whether he subsequently came, but at all vents there presently occurred an interview in which I learned om the statements of Mr. Fargo and Mr. Johnson that Mr. argo represented his concern as temporarily embarrassed and n need of assistance to the amount of about $25,000, and learned hat Mr. Johnson had come here in response to some com- unication from Mr. Fargo, and the condition of the Fargo Com- any, and what, if anything, Mr. Johnson was inclined to do as the subject-matter of discussion and consideration at that nterview. I do not recall in detail all that took place there dis- inctively separate from the other interviews. Mr. Johnson re- ained in Chicago until Monday, January 6th. In the mean- ime, substantially the same people who were present at the first nterview, including myself, had several other interviews; some- imes Mr. Gilbert E. Porter, of Isham, Lincoln & Beale, was also resent; and sometimes Mr. Thomas Cratty, counsel for the argo Company.

The general result of the first interview, or first interviews, as the presentation by Mr. Fargo of what he stated to be the

Testimony of Wm. G. Beale.

facts about the condition of his company; and Mr. Johnson's position was practically a non-committal one. He wanted light and questioned Mr. Fargo, and advised with Mr. Fargo, or Mr. Fargo advised with him, and there was nothing which I should class as stronger than a general indication of unwillingness or being somewhat averse on the part of Mr. Johnson to make an advance.

I cannot remember the details of what was said at that time, but the impression produced on my mind was that Mr. Charles E. Fargo had the, at first, rather hopeful feeling that he would get the $25,000 for the asking from Mr. Johnson, without any security or promise of security; and, as I remember it, I was more of an obstructionist than Mr. Johnson to his getting the money.

The substance of the first or earlier interviews was that Mr. Fargo should thoroughly look into his situation in a brief and quick way, and as definitely and as accurately as possible tell Mr. Johnson just what his condition was; and then Mr. Johnson and I discussed the question of the propriety of his making any advance, both with relation to the Fargo Company and with relation to his position in his own companies.

Mr. Johnson did not then understand judgment notes as well as he does now, for they are not so well understood in the east as they are in Chicago, and when judgment notes were first suggested I explained to him that judgment notes were of no particular value except as the Fargo Company refrained from giving security to other people.

Actually, I did not pay much attention to the figures produced by Mr. Fargo and discussed with Mr. Johnson, nor much attention to the discussion which took place about figures. I do remember in a general way that Mr. Fargo asserted that his assets were largely in excess of his liabilities, and was emphatic in his assertions that practically there was no risk—there would be no risk on the part of Mr. Johnson in advancing money, excepting the personal risk involved in lending money to any individuals.

The legal phases of the situation naturally impressed themselves the most on my mind, and they particularly impressed me because for a long time I could not see any way whatever of adopting any means of providing definite and certain security for an advance by Mr. Johnson to the Fargo Company.

During the discussions some mention was made of a chattel mortgage. My best recollection is that I myself mentioned that

Testimony of Wm. G. Beale.

such as a man states a hypothetical question or sets up a straw man and then knocks it over. I observed that a chattel mortgage would be technically perfect security under ordinary circumstances, but that it would be of no utility whatever in this case, because it would be invalid on account of covering a stock of goods to be sold in due course of trade, and in the next place, it would be spread of record and do positive injury to the Fargo Company.

We had a number of interviews at the Auditorium Annex, mostly in the late afternoon or in the evening, because I was very closely occupied at the city hall and could not be present at interviews in the day time, and what interviews we had, I think, were mainly in the evening.

During one of the interviews, Mr. C. E. Fargo, in response to some suggestion of mine that I could not see any clear way of getting a certain protection, even if judgment notes were given, made inquiry as to how it would do if the board of directors were to be reconstituted so there would be a majority in the board of directors who would protect the security. I do not remember his exact language, but that was the substance of it. He had evinced at all times a strong indisposition to give judgment notes—did not like the idea of giving judgment notes, or the idea of giving any security, and, as I say, he had appeared to have originally the idea that he would get the $25,000 without any security; but when he found that he could not get it, then there was an express willingness to give judgment notes provided their use was restricted and limited very specifically, so that they could be used only under certain contingencies.

Mr. Johnson expressed, both in the interviews and to me, some unwillingness to make any advance; and, so far as I can remember, upon the basis or with reference to the general financial condition of things.

So far as I could see, and I do not think there was any special expression on the subject, he had quite as much confidence in the Fargos themselves and in their condition as he had in 1893 when the Fargo Company had needed some forbearance on the part of the rubber companies, or rather the Candee Company and the Metropolitan Bank.

At that time, that is, in 1893, I remember Mr. Johnson distinctly making the remark to me that the Fargo Company were all right and would pull through, and it did pull through at that time—in 1893. Mr. Johnson suggested to Mr. Fargo at the Auditorium Annex that Mr. Fargo should go to the Metropolitan

Testimony of Wm. G. Beale.

Bank and see how they felt about joining with Mr. Johnson in an advance, but Mr. Fargo was utterly unwilling to do that. A great deal of friction had arisen between him and Mr. Keith, each was somewhat irritated with the other, and Mr. Fargo apparently did not want to go near Mr. Keith.

Finally, upon the suggestion about the change in the board of directors, and upon its making a favorable impression upon me, Mr. Johnson said that he would advance the money or cause it to be advanced by one of the companies, if I could see my way to having it absolutely secure.

Before this time I should say there had been discussion and mention of the fact that it was to be one of the conditions of any advance in there that there was to be like security and preference in respect to the existing indebtedness. In the discussion Mr. Johnson had said to Mr. Fargo one day in my hearing that if they were unable to get the advance and they had to go to the wall, he thought, in view of past treatment, the rubber company ought to be preferred by the Fargo Company; but this observation was not met with any particular favor by Mr. Fargo, who said if they could not get further assistance and had to fail, they proposed to treat everybody alike—all the creditors alike—and the subject dropped. I considered the proposed method suggested by Mr. Fargo with considerable care and finally came to the conclusion that a change in the board of directors as suggested by him would be sufficient protection, and so advised Mr. Johnson the board of directors, the new directors, to go in for the purpose of seeing that the agreement made by the Fargos, and made for the Fargo Company through them, was carried out, and for no other purpose.

Thereupon Mr. Fargo suggested that there was no particular use in giving judgment notes at that time if the board of directors was to be changed, and inquired whether the giving of judgment notes could not be dispensed with altogether, and judgment notes afterwards given if necessity afterwards arose and the company did not pull through. He was fortified in his suggestion by Mr. Cratty, from a lawyer's standpoint, that it would, in Mr. Cratty's judgment, be all right, and I agreed to look into the matter and consider it a little. I did consider the matter and finally came to the conclusion that I wanted all instruments that had to be given, and all corporate action that had to be taken, attended to and closed up as far as possible by the company as it stood, so that the new directors who would go

upon nomination of Mr. Johnson or myself should have practically nothing to do. Testimony of Wm. G. Beale

Mr. Johnson asked Mr. Fargo in the course of one interview whether he was dead sure that $25,000 would pull the company through the limited period during which the Fargos claimed the company would need assistance. I think this period was originally mentioned as up to some time in May.

Thereupon the three Fargos discussed the matter among themselves for a few moments and concluded that they would review that question and let Mr. Johnson know at the next interview; and at the next interview they fixed the sum as $50,000. I think there was something said about its being no use to advance $25,000 if it was not going to be enough, that one bite might just as well be made of the cherry, and that if they were going to need any more money to carry them through they better do some careful figuring and find out and have that additional amount at that time. I think Mr. Johnson had not definitely promised a $25,000 advance, but had simply kept on discussing it with them. Then it was finally agreed that judgment notes should be given by the board of directors as it stood, and that the board of directors should be changed, and the $50,000 should be advanced, and other details of the agreement, the conditions under which judgment notes were to be used, and so forth; the time was lengthened from May up to July, and all the conditions and the whole arrangement were finally made as substantially shown in the draft of written agreement which was subsequently prepared under date of July 6th, and which has been introduced in evidence. (See Defendants' Exhibit 9, p. .)

I cannot call to mind that there was any substantial change whatever in formulating that agreement from the terms and conditions as they had been previously agreed upon verbally.

The Fargos needed their money at once, and $10,000 was advanced through me on January 6th, before Mr. Johnson left Chicago. They needed some money then but not all of the $50,000.

Mr. Johnson had to return to New York; this money was needed at that time, and the agreement was not fully completed before noon of that day, January 6th, and question arose about the actual giving of the judgment notes.

Mr. Fargo showed the greatest reluctance to giving any judgments notes at all until the written agreement as to how they were to be used was actually signed. In fact, all the way through he was exceedingly captious as to what disposition

Testimony of Wm. G. Beale.

should be made of the judgment notes, and it was his insis
ance that there should be this written agreement to protect h
and his company. Finally it was arranged to get his sig
which Mr. Johnson would not allow him to have without my s
so, and I would not let Fargo have it unless the judgme
notes were executed. He agreed—Fargo agreed that the co
pany should execute the judgment notes, and that they shou
be delivered to me. That was done on January 6th; they we
not delivered directly to me by Mr. Fargo, but delivered to M
Porter or Mr. Sadler to be brought to me.

In the formulating of the agreement there was more or le
discussion of the phraseology, and as to the actual drafti
specifying all the conditions which had been loosely agreed upo
and I finally became very much provoked at Mr. Fargo's captio
attitude. He and Mr. Cratty assented to the written agreeme
as finally drafted, and then they wanted a provision put into th
notes substantially as would be put into a note secured by
trust deed, to the effect that the notes were subject to the agre
ment, and this was telephoned to me, I think, by Mr. Porte
from Mr. Cratty's office, to the city hall; I flatly refused to co
sent to it, as being likely to lead to a lot of trouble in the futu
if it happened that judgment had to be entered on the notes.

Thereupon Mr. Fargo came in to see me, probably on th
morning of the 7th of January, and we had quite a vigorous dis
cussion. I told him that I thought for a man whose concer
was embarrassed, and who stated it must go to the wall if
did not get some temporary help to pull it through its tempora
embarrassments, he was displaying a good deal of captiousnes
in respect to the provisions of the agreement to be made wi
the man who was advancing him $50,000, and who was an o
acquaintance, a personal friend, and whose company he alread
owed about $175,000; that I thought it was irritating Johns
and causing Johnson to feel that there might be something
unfriendliness come up between him and Fargo, just as the
had been between Mr. Keith and Mr. Fargo. I remember
showed him a telegram which I had received on the 7th
January from Johnson, sent from Altoona, in which Johns
referred to the unclosed situation of the agreement when h
went away on the 6th. I read the telegram which I had i
my hand, and which I refer to merely, or more than anythi
else, for the purpose of showing the date, and where Mr. Johns
was on the 6th; it was addressed to me personally:

"Sadler has explained the situation to me. Think positi

ould be made absolute soon as possible by completing agreement s arranged, and organization of board of directors to prevent ving other judgment notes. This before we made" (which ob- ously should be make) "further money advance. Failure to us protect us should result in executions by us. Used—" (I ppose it should be use) "at your discretion all judgment notes your possession, in order to put our claim beyond peradvent- e. We advance further money immediately upon your wire at details are completed. Address 90 Read street, New York. ave written."

In this conversation I explained to Mr. Fargo that Mr. John- n was feeling somewhat irritated; that he thought Fargo emed to have more or less distrust of Johnson, and that some- dy had to be trusted—that it was impossible to do any busi- ss without giving credit, personal or otherwise, to some indi- idual, and that I could not see why Mr. Fargo should not trust r. Johnson as well as Mr. Johnson be expected to trust Mr. argo. Thereupon Fargo changed his position somewhat and id that he did not care anything about a written agreement, at he was satisfied to rely upon Mr. Johnson's fairness and nsideration for their concern, and it was only a question of hether his brothers would be satisfied with this, and he would and consult them, and if they were satisfied they would have written agreement at all. He did go off, and came back, and ported that his brothers were satisfied, and that no written greement need be made, and therefore none was made. No greement was signed, although drawn up in shape for execution; d that written draft of agreement represented precisely, as understand it, what was agreed to and what was sought to done between the companies in the January arrangement.

Under my general direction, then, the Fargo Company took s corporate action, Mr. Porter assisting me in the matter, and far as I know that action was in line with the arrangement s agreed upon, and everything was in fact carried out between e companies as it was originally intended to be, except in one rticular. When Mr. Johnson left here, leaving the matter sub- antially in my charge, it was somewhat indefinitely understood at the new members to go into the board of directors to replace e employes of the Fargo Company would include probably Mr. llen, the local agent of the United States Rubber Company ere, and Mr. Burt, who was either with Mr. Allen or in some her establishment selling rubber boots and shoes in Chicago. was understood that the directors were to be, if I remember

Testimony of Wm. G. Beale.

right, satisfactory to Mr. Johnson. That meant, as between Johnson and me, that they were to be satisfactory to me. I been for some time counsel for the company out here, and as as I was willing to take the responsibility, had no hesita about being supported in any reasonable thing I did.

Subsequently, Mr. Fargo came to me and expressed a de for some different directors, and wanted to know if they co not be taken out of my office. He explained to me that tak men like Allen and Burt, and having them coming into the st and manifesting an interest in the business, as they might being in the same line of business, that possibly they would talking around the street and it would tend to hurt the Fa Company; and he preferred to have other persons taken, a would be glad to have them taken out of my office.

I at first objected to this from no other reason than I did care to have people in my office taking the responsibility wh was taken. I did not care to have my office take the respo bility of directorships, but after a little thought acquiesced in and that change, if it be really a change, was made in the o inal arrangement. At about the same time I suggested to Fargo that I wanted five directors to be elected by the compa at my nomination, instead of four, to meet the possibility t one might die. If either one of the seven died it would leave of whom only three, if one of that four died, it would leave o three put in there to protect the security, and if affirmative tion was by any possibility required, it could not be taken. would take the chances of two dying, and I wanted one of five to be the secretary and treasurer, because ordinarily ju ment notes would be signed not only by the president of the c poration, but by the secretary or treasurer. I was willing to ta the chances as against any judgment notes executed by president not expressly authorized—affirmatively authorized the board of directors.

That was the thing I was seeking to provide against, and su stantially the only thing. The board of directors was chang that way, and I advised Mr. Johnson, I think, of the change th had been made, or Mr. Sadler—I may have written Mr. Sadl and I received from them an expression that it was all right.

From that time on there was nothing particular of interest connection with the Fargo Company that I remember, exce that through my office, I think, another $10,000 was advanc to the Fargo Company, and I had to advise Mr. Sadler with r spect to the notes which were signed, that is plain notes, by th

Testimony of Wm. G. Beale.

rgo Company to Mr. Sadler and see that too much confusion
d not arise.

The judgment notes were collateral to the actual indebtedness,
has been heretofore stated by Mr. Fargo.

I may as well say right here generally that to the best of my
ollection the testimony of Mr. Fargo, or Mr. Johnson and of
r. Sadler, is substantially correct on all the phases of this
tter, with some trifling variations perhaps in detail; for in-
ance, I think Mr. Fargo was mistaken in saying that we dis-
ssed setting aside the sixth floor for consigned goods in Janu-
y, 1896. My memory is that that all had reference to the 1893
nsaction.

I ought to say that I was probably more stringent than was
r. Johnson in insisting upon more security—upon security
at would be entirely satisfactory, and in trying to tie up the
rgos as closely as I could, because really the ultimate re-
onsibility came on me, for Mr. Johnson was willing to do any-
ing that I would advise, and would have been more liberal
an he was but for my advice, and without my having any
rsonal suspicion of the Fargos personally or suspicion of the
ndition of their house, I had had experience enough with con-
ns in embarrassed conditions to know that sometimes they
l to come out as satisfactorily as they expected, and I had
so seen a great many cases where men supposedly and usually
nest had done very questionable things when it came to a
nch, and I explained that frankly to Mr. Fargo by saying to
m that while I had entire confidence in him under ordinary
rcumstances, I did not want Johnson to take judgment notes
protected by anything else and rely upon those judgment
tes, with the feeling that they were all right, and then Mr.
rgo find subsequently that he might need $5,000 or $10,000
re, and go and execute judgment notes to somebody else for
e sake of getting it—that I would not chance that situation. I
d just been through a transaction in our office of substantially
at kind, where a man had had a large credit of $40,000 or $50,-
0 from eastern friends who relied upon him implicitly and to
hom he had voluntarily given judgment notes, and when he
eeded a little more money went off and protected somebody
se just to get a little more money, and then failed.

I had come to have entire confidence in Mr. Fargo by reason
the acquaintance that had developed between him and my-
lf; I did not know him prior to 1893, when one day Mr. John-
n, for whose company I was then acting, walked into my office

Testimony of Wm G Beale.

and explained the friction between Mr. Fargo and Mr. Keith which appears in the testimony, and said that Mr. Keith was insisting upon having judgment notes; that he, Mr. Johnson, did not ask for judgment notes, but if Mr. Keith was going to have them, he wanted them, too, and he hoped to have some arrangement made by which Mr. Keith would not get ahead of him, but he did not know how Mr. Keith might act. I do not think at that time he knew Mr. Keith personally, and he thought it was his duty to his companies to get on the same footing that Mr. Keith did; and it was at that time he expressed to me the belief that the Fargo Company would pull through if he, Mr. Keith, treated them at all fairly; and at that time I became acquainted with Charles E. Fargo, and came to know him very well, as we were both of us fond of fishing and shooting, and he inveigled me into joining a shooting and fishing club up in Northern Wisconsin.

A great deal of friction developed with Mr. Keith at that time in 1893. Mr. Keith told me at that time, in 1893, that financial conditions were bad—that he thought the Fargo Company ought at once to clean off its slate—that he had no particular reason for doubting the solidity of the company, but that on account of the bad conditions of business generally he proposed to be in a position where he could protect his bank without asking a favor of anybody—that if he wanted to take judgment he proposed to be able to do it without having to ask the consent of Mr. Fargo, and he was in rather an unpleasant frame of temper toward Mr. Fargo, who reciprocated the feeling.

In connection with the 1893 matter, the Fargos showed themselves very friendly to the Candee Company, which was then the company interested, and to Mr. Johnson, and even made the suggestion one day that if Mr. Keith drove them to the wall he would see to it that he got left and the rubber companies came out ahead. Mr. Keith heard of this, and spoke to me about it, and it naturally did not tend to increase his happiness. The judgment notes were ultimately given to the bank and the Candee Company.

Mr. Manning: The United States Rubber Company was not then in existence?

The Witness: The United States Rubber Company was in existence, I think, but not doing business here at that time. It did not do business here, at least a selling business directly, until 1895.

An arrangement was made between Mr. Keith and Mr. Johnson, in 1893, that neither should try to get ahead of the other

Testimony of Wm. G. Beale.

ey had to put their judgment notes into judgment, and it was greed the judgment notes should be surrendered after a certain ortion of them had been paid off.

Judgment notes were given to both L. Candee & Company and he bank. The Candee Company also resumed possession of cer- in goods—a large quantity of them, which the Fargo Company ad on hand and which had been sold by the Candee Company the Fargo Company under its usual contract of that time.

This resumption of possession was taken on my advice and holly upon my advice, or at least my advice was followed im- icitly in the matter—as a legal matter, in order to fully pro- ct the Candee Company against any possible contingency.

It was at that time, I think, the subject came up of putting ll consigned goods together. I do not remember to have heard discussed at any other time. A custodian was put in there nd was kept in there for a short time, that is, until all possi- ility of trouble from Mr. Keith passed over.

Mr. Keith had emphatically stated to me in one conversation hat if the Fargo Company did not do substantially what he anted them to do, that he would sue them if he lost every dol- r of the account. I reasoned that if he did do this, of course, it ould only be a question of a short time when he would break p the Fargo Company, and for that reason had a custodian ut in.

The next thing that I had to do with the transaction of 1896 was n advising Mr. Sadler about notes that were sent on. The argo Company sent on a lot of notes, partially to represent and vidence the open account which previously existed between . H. Fargo & Co. and the United States Rubber Company, and artially to represent indebtedness to L. Candee & Company, hich the Fargo Company wanted evenly distributed; payment f part of it to be made at one time, and some of it postponed to later date. Some way, this did not strike Mr. Sadler as being exactly right; I suppose for the mere reason they all ran to the nited States Rubber Company, and he sent them to me, or sked my advice about it, and I took a hand in having the mat- er straightened out, so that the notes were distributed properly o the United States Rubber Company and L. Candee & Com- any.

I think there was nothing more of consequence that I had to o with the matter until the latter part of July. I used to see Mr. Fargo occasionally. I am not sure whether he went up to he Gaylord Club—this club I was speaking about—in the spring

Testimony of Wm G Beale.

in the trout fishing season that season or not, but before the opening of the season and some time in May he came into my office; he talked to me about the spring fishing season, and we had a little casual conversation as to how the company was doing. He was exceedingly hopeful. I think I asked him the question of how they were getting along. He was exceedingly hopeful; everything was booming, and he expressed to me the view that Mr. Johnson ought pretty soon to be willing to surrender the judgment notes and take plain ones. I said to him that that was a matter on which I could not assume the responsibility, or however, that I would not; that it was something that Mr. Johnson would have to decide; that my experience as a lawyer was to let clients run their own affairs as far as they would, and whenever Mr. Johnson was satisfied with their improved condition I should interpose no objections to their giving up the judgment notes. There was no request on his part at that time to give up the judgment notes. It was a mere specimen of his sanguine expectations and hopes.

In July—the latter part of July—he came into my office and said that things were not as favorable as he had expected, that collections were exceedingly slow, and that he thought it probable, I do not think he said he positively knew it, but that probably they might need $5,000, or possibly $10,000, during August to tide them through that month, and that then they would be all right, on their feet; and he explained to me that he could get that, probably, at the Metropolitan Bank, if the Metropolitan Bank was taken in on the same terms as ourselves and given judgment notes, and he recalled to my memory the fact that Mr. Johnson and I had originally suggested that the Metropolitan Bank should come into the arrangement, and he said therefore he thought we would be likely to have no objection to that arrangement, because it was just what we wanted him to do in the first place.

He said he could go to the Metropolitan Bank and arrange for that money, and, as I remember it, he had some note coming due at the bank which he had to deal with, and—I do not remember what he said on the subject, if anything, to me, about the renewal of that note. Mr. Fargo has testified that he did not think it would be right for him to go and get that note renewed if he was going to fail in a few days, but I do not remember the conversation—do not remember his expressing that ever to me. What he did desire was to get a little extra money, and to avoid

having to explain the situation to Mr. Keith unless he could take Mr. Keith into the arrangement. Testimony of Wm. G. Beale.

It may be that he and I are both mistaken about the renewal of the note to the Metropolitan Bank. My impression is that the renewal was a few days before this interview, and that there were two matters which came up in July; one the renewal of the note, earlier in July, and the second one when he came in on the distinct errand, and arranged to get some additional money from them. I am under the impression that some time in the middle of July he came in and told me—and I think I am correct about it—came in and told me that Mr. Keith had told him to pay the note coming due at that time, and he could not go to Mr. Keith and explain why he could not pay it, because there would be some embarrassing questions asked, and finally it was decided by him, as I remember it, at that interview with him, but whether on my advice or not I am unable to say, that he would just put a new note in a letter and write to Mr. Keith, in order to have the entire information contained in the letter and not have to answer any embarrassing questions. I think this was done; I think he sent a letter to Mr. Keith with a new note in July, and I think it was a few days before, a week or so before, Mr. Fargo came in to see me about getting additional money. My recollection is refreshed about that and aided and fortified by the telegraphic correspondence which passed between me personally and Mr. Sadler about the middle of July, in which I informed Mr. Sadler of the fact—the bare fact—that the Metropolitan Bank had asked Mr. Fargo to pay a note then maturing on account of alleged tight money markets, a note for $10,000, and that the Fargo Company was unable to do it—to make the payment, and that if Mr. Keith insisted upon having the note paid there might be trouble.

That telegram I sent on July 16th, and I wired that possibly Mr. Sadler or Mr. Johnson better come out here. Mr. Sadler wired me that he would come to Chicago.

Mr. Manning: What did you say in your dispatch of July 16th?

The Witness: I here introduce the dispatch in evidence, although I think here is only a copy of a copy, because the original copy is a letter-press copy:

"Metropolitan Bank is asking Fargo, because of alleged tight money market, to pay note for $10,000 due July 21st. Fargo Company unable to pay and extension may be refused. Fargo promises to keep me informed so that, if necessary, judgments can be entered on our judgment notes. Better wire me amounts now

Testimony of Wm. G. Beale.

owing respectively to United States and Candee Companies, in cluding any discounted notes on which they are liable as en dorsers. Better also wire me authority to take whatever step I may think necessary for protection of companies. Possibly you or Mr. Johnson let me come out here."

That is all that message. Also on the 16th, Sadler wired me

"Leave Chicago Sunday night; see you Monday morning, with all papers relating to Fargo situation. Judgment notes will cover amount due this company at present time as far as we know. Should any action be required before I arrive, use your best judgment for interests of this company." Signed by Sadler.

On the 17th I sent this telegram:

"Fargo advises us has just received pleasant letter from Metropolitan Bank agreeing to extend note due on 21st instant. This apparently leaves matter all right for the present."

Sadler wired me on same day, the 17th:

"Telegram received. Understand unnecessary for me to leave for Chicago to-morrow. If I am wanted, wire me and I will start immediately."

That closed that episode, and, as I say, I think that is the only one in July referring to any note of the Metropolitan; and I think that Mr. Fargo has confused that with a subsequent interview which took place on July 30th, when he came to me and stated his needs for a little additional money.

I said to him that it was altogether a question of business—a question of what their condition was—what assets they had; that as a matter of fact I would be very glad if he should take in the Metropolitan Bank. I supposed that they were their largest creditor, and it would be better to have the bank in on the same footing, rather than have the rubber companies alone interested, if the assets were sufficient to protect them both, and no material changes had taken place since January, and I advised him to go to New York and see Mr. Johnson, and I told him I would write right away that day; as I remember, I told him I would write to Mr. Johnson, so that Mr. Johnson would have advices from me contemporaneously with their interview there, and if my letter got there first, why, it would give Mr. Johnson some advance information.

I understand that he did not go to New York, and that Mr. Sadler came out here, and in some way which I cannot just recall to mind now, I was myself satisfied of the situation, and I went off on Saturday night, August 1st, for a fishing trip. The Monday of the next week, the Monday or Tuesday, I got a tele-

Testimony of Wm. G. Beale.

ram, I think from Mr. Porter, advising me, to my great surprise, that the judgment notes had been entered—that judgments had been entered on the judgment notes; but as I was absent then, and for some days thereafter, I have no knowledge of the details connected with the entry of the judgments.

I had to do with the making of sales under the executions, both in the Fargo store and at Dixon, but I do not know that there is anything material for me to testify to about those; everything is in the record. The real estate at Dixon has been sold under a decree of court foreclosing some mechanic's liens; no redemption was made by the Fargo Company, or by the Metropolitan Bank, or by the rubber companies, and the real estate has passed permanently, I suppose, into the possession of the purchaser at the foreclosure sale, for the time of redemption expired some little time ago—some weeks ago.

A change was made in the by-laws of the Fargo Company at my instance, to prevent, and solely to prevent, the possible inference that the by-law as it stood would authorize the president of the company alone to give any judgment notes or would protect anybody to whom he did give judgment notes.

It is my recollection that in having this by-law changed I had particularly in mind the Metropolitan Bank, for from the beginning of the transactions in 1896 with Fargo I never for a moment had a thought that any other of the creditors than the Metropolitan Bank, outside of the rubber companies, were likely to be sought by the Fargos, or that anything special was likely to take place between the Fargos and any other creditor, outside of the rubber companies, of course, than the Metropolitan Bank, and I had particularly the Metropolitan Bank in mind in strongly urging the Fargos to keep their indebtedness down and refrain from branching out, and to make their business generally as snug as possible.

Mr. Johnson and I both cautioned them—warned them in January, 1896, and subsequently on more than one occasion I personally cautioned Mr. Fargo, criticised his methods of business a little by saying to him that I thought he was a little hopeful, slightly sanguine—a little inclined to branch out, and possibly had too much time to go fishing, and so forth. That I remember saying to him I thought he was all right if they handled their business as it ought to be handled. They had started with a big business and ought to be able to carry it along even through these hard times, but I was particularly desirous that through

Testimony of Wm. G. Beale.

any strong temptation he should not put the Metropolitan Bank in a poistion where it could claim to have been deceived.

I do not think that the idea of other creditors—merchandise creditors, or their position entered the mind of either Mr. Johnson or Mr Sadler or myself during the entire transaction; we were thinking of the Metropolitan Bank and were anxious to see that that indebtedness should not increase after we made the arrangement, and that subject—reference—to the Metropolitan Bank formed the subject of some conversation between Mr. Johnson and myself, and I remember distinctly at one of the interviews at the Auditorium Annex saying that Fargo after that must not go to the Metropolitan Bank to borrow additional money. We had in mind that he would not need to increase his credits after getting this $50,000 from the rubber companies. On the other hand, that he could generally make reductions all along the line. I think that when I made my statement in court about the July interview with Mr. Fargo I apparently had the same confusion of mind with regard to the two interviews that I have spoken of in Mr. Fargo's case There were obviously two interviews in there, one the middle of the month and one the latter part of the month.

I think, in a general way, that is all I need to say on the subject unless there is something you want to question me about.

Q. There is one question. At the time it was agreed that the board of directors should be reconstituted, was there any agreement as to how far the new directors should participate in the business?

A. Oh, yes; that was one of the things strongly insisted upon by Mr. Fargo, that he and his brothers should run their business and that the sole purpose of the change in the board and of the election of the new directors should be to protect the security given to the United States Rubber Company; and I mean in exact words the expression used was that the directors should not interfere in any way, except so far as necessary to protect the rubber companies, with the business, which would leave the business to be run by the Fargos during that period.

Q. After the board of directors was reconstituted and had held this meeting on January 9th, did you, representing the rubber companies, instruct or control the new directors in any way in their official capacity as directors?

A. Well, only to the extent of giving them, if I did give them this information, that they were not expected to interfere with

e running of the business. I do not know how far I informed em about that. Testimony of Wm. G. Beale

Q. But after that time, after the meetings had all been held, d the transaction was consummated in January, 1896, did you struct the new directors in any way as to what they should do should not do as directors?

A. Oh, I would not be able to say that I did or what conver- ation I had with them on the subject one way or the other at is time; their work was done when they had gone in there, as looked upon it, and there was nothing where their author- ation and affirmative action was necessary, so that I did not ve any occasion to instruct them to do anything, and I do not ink I gave them any instructions at all, or attempted to. hen they first went, I have no doubt that I directly or indirectly used to be communicated to them in some way the general rpose for which they were elected; just how I did it I cannot st recall.

Q. At the time that the Fargo Company was seeking the ad- nce of $50,000, was anything said by Mr. Fargo as to how long expected his embarrassment to continue, or how soon he uld overcome it?

A. May was the original time; he wanted the $25,000 to carry em through till May; that was the time, the season during hich he expected to dispose of these bicycle shoes for the sum- er's business, summer trade, retail trade, and they expected— laimed they expected to have a large profit in that business, d that either they would have to go to the wall or pull through wimmingly before that time; and they had not any doubt which would be.

Q. You spoke, Mr. Beale, of a batch of notes that the Fargo mpany sent to Mr. Sadler about April, 1896, covering the in- btedness to the United States Rubber Company and L. Candee Company. Do you recollect that those notes merely covered e $50,000 advanced by L. Candee & Company and the indebted- ss to the United States Rubber Company, and did not cover e $44,900 of old indebtedness to the Candee Company?

A. Well, of course all I know about that was what I gathered om letters written to me by different parties, by the Fargo Com- any and by Mr. Sadler. Those letters are in evidence here, nd what they told me, and my memory is that there was about 90,000 or $198,000 of notes sent them, which covered some in- erest; that is, I understood from the correspondence which is in vidence, they covered the open account to the United States

Testimony of Wm. G. Beale

Rubber Company of about $140,000 and the $50,000 of advan made by the Candee Company, and at the same time the was correspondence about the fact, and one or the other of the wrote in his letters that the other note securing the old indeb edness of $49,000 had "run off," and the Fargo Company asked have that $44,900 judgment note surrendered to them; that is the amount of the plain notes for which it stood as collateral ha "run off" and been paid; and it was surrendered by my dire tion. I think you wrote the letter, Mr. Porter. Of course none the payments of the Fargo Company went through my office through my hands.

The Witness: I said previously that I could not remember whether Mr. Fargo went up to the Gaylord Club in the spring 1896 or not, fishing, but I am quite confident he did when I re member that I refrained for some little time from returning to hi company that judgment note for $45,000 until he personally should be back from the Gaylord Club, in order that he would know of it. I think that appears in a letter which I wrote him I find by refreshing my memory by copy of the letter which wrote Mr. Sadler on the 14th of May, that the first judgment not was then paid. It refers to an interview held the preceding da by me with Mr. Fargo, and suggests that Mr. Sadler instruct me to return that note inasmuch as it has plainly been paid, and then he did, and we sent it to the Fargos later. Here is the lette from Mr. Sadler to me, May 16th: "May sixteenth. Dear sir: I neglected in mine of this a. m. to advise you to surrender to Fargo the judgment note for $45,000 held against notes which have run off and been paid. Will you kindly do so?" This is signed by Mr. Sadler—the original letter.

Cooss-Examination by Mr. Smith.

Q. I understand from your testimony that in January, 189 Mr. Fargo was very hopeful that he could get this extra money that he needed without giving any security, and strongly ob jected to giving security?

A. I did not mean to put it as strongly as that. I meant to say that it was rather a matter of manner than anything else, and an apperance of hopefulness in that. He had been helped or rather indulged, by the rubber companies before, and the $45,000 was a bagatelle.

Q. But this is true, that the question of security was insisted upon by you?

Testimony of Wm. G. Beale.

A. Oh, yes.

Q. And Mr. Fargo, who objected quite strenuously, was decidedly opposed to giving judgment notes?

A. He did not want to do that; he did not want to do it—that he would have much preferred not to; I cannot say that he made strenuous objection to that.

Q. There were two methods suggested of giving security, and I suppose both of them were suggested by you, or by Mr. Johnson or Mr. Sadler?

A. To what two methods do you refer?

Q. The two methods I refer to were the chattel mortgage and the other of giving judgment notes with a change in the board of directors.

A. Well, the suggestion of a change in the board of directors emanated from Charles Fargo; I had never thought of it—nobody had mentioned it to us before—I do not know why we did not think of it, but it did not come up, and up to that moment I had not seen any feasible method of getting security which would be clear.

Q. The chattel mortgage feature was spoken of by you?

A. That was spoken of by me; whether that was the first mention of it I cannot remember, but I do remember mentioning it and brushing it aside with the statement that it would not do.

Q. It would not do for two reasons: first, it was a shifting—changing—stock in there, and secondly, it involved putting the chattel mortgage on record, which would ruin the credit of the Fargo Company? That is correct, is it?

A. That is correct.

Q. Then the conversation centered upon the giving of judgment notes, and that did not appear to be to you entirely satisfactory for the reason that the Fargos might give security to other people which might interfere with your security under the judgment notes? That is true, I suppose?

A. That is correct, also.

Q. And to meet that objection, Mr. Fargo suggested that a board of directors friendly to the rubber companies might be put in and thus any action of that kind might be prevented?

A. That is correct. I would like to say, Mr. Smith, right in the line of your question, that the way that suggestion was made, or rather the actual making of it, is very strongly impressed on my mind—it is almost photographed there. We had been groping around discussing the question of security without any substantial result; I had not seen my way clear and had probably

Testimony of Wm. G. Beale.

just been making some observation of the real insecurity of ju
ment notes until they were used, when Mr. Fargo, who sat in t
position you have all seen him sit here, with his hands upon h
head, suddenly looked up and said, how would it do to cha
the board of directors of the company so that a majority wo
be friendly to you or in your interest? I thought a minute, b
cause it was a new suggestion—it impressed me, and I said th
may possibly be worked out, or some expression of that sort.

Q. And while the other gentlemen whom you have mentio
were spoken of and practically agreed upon as directors bef
Mr. Johnson left for New York, it was ultimately decided th
the directors should be constituted as they were constituted,
shown by the records here—in your office?

A. It was agreed by me on behalf of the rubber compani
they practically left it to me.

Q. And the reason of that was that Mr. Fargo did not wish
have any talk about the company or its condition, or have an
body interfering with the management of the business, and th
the matter become—the situation—the exact situation beco
known on the street?

A. That was the substance of the reason that he gave me
think that in addition to that he manifested something of th
same spirit that I have referred to previously in my testimon
of great confidence in his condition, and captiousness of havi
anybody taking any position with reference to it.

Q. I suppose that you do not hesitate to say that when the
directors were selected from your office, that in some way th
notion was conveyed to them that the object of having them a
as directors was to secure and to give further security to an
fortify the judgment notes held by the rubber companies, and t
prevent any action of the Fargo Company which would in any
wise—which might in anywise materially affect that security?

A. That needs a little longer answer than yes or no.
undoubtedly in some way caused the newly-elected directors
understand the purpose for which they were elected, and th
purpose was purely the negative one of preventing security fro
being given to anyone else which would lessen or do away wi
the affirmative action of the board of directors in favor of th
rubber companies.

Q. The by-laws of the company were amended as shown i
the records offered in evidence, with that object in view?

A. Oh, yes.

Q. You have stated in your direct examination that the

ight possibly be need of affirmative action on the part of the oard of directors, and that therefore you insisted upon having n additional member of the board there in addition to the numer that had been originally spoken of. Now, isn't it true that he board of directors as constituted from your office was so rganized and so constituted that they would do anything that as reasonable and proper to further the interests of the rubber ompanies with reference to maintaining any security which hey had or making that security perfect?

A. Oh, I presume that is so; that is to say, I assume that the oung men who were in my office had sufficient confidence in me so that if I had asked them to take any action, so it did not at once offend their moral sensibilities and seem to them to be wrong, they would have done it, relying upon me. I do not question that for a moment. The only affirmative action that I could have contemplated was on the assignment of accounts which might have required possibly some action of the board of directors to make that assignment more effectual. Beyond that, there was none that I had in mind.

Cross-Examination continued by Mr. Newman.

Q. You were armed, however, Mr. Beale, so that if anything arose after January requiring affirmative action to protect your clients you could secure such action?

A. I suppose that was the natural result of having five directors in there, without any question of intention.

Cross-Examination continued by Mr. Manning.

Q. Do I understand, Mr. Beale, that the business was to be conducted, after the board of directors was reorganized as suggested by you, the same as before?

A. Just as it had been managed before, except so far as they might in business methods be more cautious, or something of that sort, but the three Fargo brothers were to run the business just as everybody knew they had previously run it.

Q. You say you insisted upon having the secretary and treasurer. Who was the former secretary and treasurer?

A. One of the Fargo brothers; do not remember whether Frank or Edward A., but I think E. A. was the secretary, and Frank Fargo treasurer.

Testimony of Wm. G. Beale.

Q. Was he to continue the same after the new board of dir ors were elected?

A. No; Frank Fargo was continued, by verbal arrangem between Mr. Fargo and myself, as assistant treasurer over the and was to attend to all the ordinary business of handling t moneys of the company, that being satisfactory.

Q. As assistant treasurer, instead of treasurer?

A. Yes; and was to do it—that being satisfatcory to all t stockholders, of course.

Q. Was there any action taken by you in that behalf—by t company?

A. The only response I can make to that is, I should have rely upon the record because I do not remember what was do and Mr. McKeever has testified he does not remember so I can simply say that I think Mr. McKeever is mistaken, pe haps, if he testified that he did not know about it. I had so impression that Mr. McKeever understood at the time he w elected treasurer that he would not act as treasurer—th Frank Fargo would.

Q. That Mr. Frank M. Fargo would?

A. Yes; and I think I explained to Mr. McKeever the obj of it, as I have stated it here.

Q. The changes you have here spoken of were all the chang as I understand it?

A. Yes; that is as I understand it to be. Mr. Charles E Fargo was the man that really ran the business: in fact, I had knew the others by sight—I never came in contact with th others—it was Charles E. who really ran the Fargo Company.

Q. Some of the letters already offered in evidence show th Frank M. Fargo went about to the trade making purchases an so forth—did you ever object to that?

A. No.

Q. With the exception of the two variations you say y have mentioned regarding Charles E. Fargo's testimony, th balance of that, you say, is substantially correct?

A. Yes; I do not mean to speak explicity on any trifli difference, but the general outline and current of his testimo accords with my recollection. It might be if you brought u some matter at this moment I would not take the same view of that he did.

The Witness: I want to add as a witness here a general ex pression to this effect: I believe that the exact fact and all th facts relating to the arrangement between the rubber compani

Testimony of Wm. G. Beale.

d the Fargo Company in January, 1896, and its consummaon, so far as they are substantial or material, or have any bear of consequence, have been introduced in evidence; and to best of my knowledge and recollection there was no other rpose or motive of any kind on the part of the rubber comnies than such as has appeared here in evidence and been mitted from the start, as the facts have practically been adtted from the start by the rubber companies, that they desired help the Fargo Company—to secure the advance they made—cond question, and it was a part of the arrangement also to ure against any possible mishap their outstanding indebtedss in January. The rubber companies' officers represented, d believed, so far as I could judge, that they were acting in rite good faith, and there has never been any disposition on part of the rubber companies or their counsel to conceal any the facts in the case.

Mr. Beale: In this connection I want to offer in evidence a ter which was written to my firm by the superintendent of e Fargo firm at Dixon, Illinois, just after the failure in August, d written for the purpose of informing my firm about the propty to be sold under execution. I offer this merely as indicatg the character and class of the information given to the repreentatives of the rubber companies from time to time as to the sets of the Fargo Company.

Mr. Newman: We object to the introduction of the letter on e ground that it was written after the happening of the events ferred to in the bill of complaint and which are assailed by the ll of complaint in this proceeding.

Mr. Smith: Objection on that ground and also on the ground want of any affirmative proof as to the writer.

The Master: Said letter is received in evidence and marked Defendants' Exhibit 22. (See p. 429.)

Introduction of Defendants' Exhibit 22.

Evidence taken before Master.

DEFENDANTS' EXHIBITS.

DEFENDANTS' EXHIBIT 1.

(*Offered at p. 244.*)

Consignment contract between U.S. Rubber Co. and C. H. Fargo & Co., dated May 2, '95, expiring March 31, '96.

Agreement, made this 2d day of May, A. D. 1895, between the United States Rubber Company, hereinafter called "consignor," and C. H. Fargo & Co., of Chicago, Ill., in the State of Ill., hereinafter called "consignee."

Witnesseth—That consignor and consignee mutually agree as follows:

1. Consignor. Consignor agrees to consign rubber boots and shoes of The L. Candee & Company brand and Federal brand manufactured or sold by consignor to consignee, at Chicago, Illinois, to be sold by consignee, on commission, for account of consignor, from date hereof to and including March 31, 1896; consignor to deliver all goods at the depot in said Chicago, Illinois, on detailed consignment orders therefor to be furnished consignor in writing by consignee, and consignee to receive said goods at said depot and to remove the same at once to consignee's store or warehouse.

2. Consignee. Consignee agrees to pay all expenses of carting, storing, selling and delivering said goods and to keep all said goods while in his possession fully insured at depot, wharf, store or warehouse at consignee's expense by policies approved by and payable to consignor.

3. Prices. All goods to be sold for account of consignor only at prices and discounts, and on terms directed by consignor.

4. Freight. Actual freight may be allowed by consignee at his own expense from any point within the territory located east of the western boundary of Montana, Wyoming, Utah and Arizona, to any other point located within the same territory; but no freight shall be allowed to any point outside the territory herein named except as provided under Pacific Coast discounts.

5. Accounts. Consignee shall keep full and accurate books and bank accounts of all goods received by consignee hereunder and of all sales thereof, and of the terms of sale and receipts for goods sold, and of allowances or rebates, and to whom made, and shall also bill such goods separate from his other business. All to be open to inspection by consignor or its agents at all times.

6. Statement. Consignee shall render to consignor a statement of all sales and deliveries hereunder to October 1, 189

Defendants' Exhibit 1.

hin twenty days thereafter, and a full and accurate statement ll sales and deliveries in each month thereafter as soon as y be possible after the first day of the succeeding month. h statement shall show the terms, prices, and (if consignor requires), the names and places of business of purchasers d whether or not any commission, discount or exemption from ight charges has been allowed to or agreed to with purchasers, d if any, what, and the particulars thereof.

. Settlements. Consignee will make advances on account consignor on request of consignor, in cash or notes approved consignor, upon said goods on hand and the proceeds of ds sold but not remitted for to consignor, in full for said proeds, and up to 75 per cent. of selling price of goods on nd, and any such advances upon goods shall entitle consignee a lien thereon to protect such advances, but shall not conitute a purchase by consignee or an indebtedness from conignor.

. Remittances. Consignee shall remit proceeds to consignor goods sold and delivered, as follows:

For goods delivered to November 1, 1895, on December 15, 1895.
Delivered in November, on January 15, 1896.
Delivered in December, on February 15, 1896.
Delivered in January, on March 15, 1896.
Delivered in February, on April 15, 1896.
Delivered in March, on May 15, 1896.

. Discounts. The prices and discounts now established by nsignor at which consignee may sell are as follows:

From April 1, 1895, to September 30, 1895, both inclusive, Cane goods, twenty per cent. Federal goods, twenty and twelve r cent. off the gross price list.

From October 1, 1895, to March 31, 1896, both inclusive, Candee ds fifteen per cent. Federal goods, fifteen and twelve per nt. off the gross price list.

Discounts prior to October 1, 1895, apply only to goods actually ipped by consignee to said retail trade between April 1, 1895, d September 30, 1895, both inclusive, and consignee shall not come obligated to deliver to the retail trade at the discounts force prior to October 1, 1895, any goods beyond the quantity hich he may have in stock or may have received prior to Octber 1, 1895.

Subject, however, to change by consignor at any time; and nsignee hereby agrees to hold and conform to consignor's

Defendant's Exhibit 1.

prices and discounts as now established, and as hereafter established, in all sales by consignee hereunder.

10. Terms. Terms for the present, and until changed by consignor, shall be as follows:

Bills for deliveries between April 1st and October 31st, 1895, both inclusive, shall be dated not later than November 1st, net thirty days, one per cent. off for cash in ten days.

If paid prior to November 10th, eight per cent. per annum to November 10th, and the above mentioned one per cent. may be allowed.

If paid between November 10th and December 1st, eight per cent. per annum only may be allowed.

Bills for deliveries between November 1, 1895, and March 31, 1896, both inclusive, shall be payable, net, thirty days, from date of shipment, or one per cent. off for cash in ten days; it being understood that the above named discounts for cash are to be at the cost and expense of consignee, and shall not be charged to consignor.

PACIFIC COAST DISCOUNTS.

Consignee hereby agrees that should consignee sell, or cause to be sold, any of the goods consigned to consignee hereunder in the States of Washington, Oregon, Idaho, California and Nevada, consignee will do so only at the following prices, namely:

From April 1, 1895, to September 30, 1895, both inclusive, Candee goods fifteen per cent., Federal goods fifteen and twelve per cent.

From October 1, 1895, to March 31, 1896, both inclusive, Candee goods ten per cent., Federal goods ten and twelve per cent.

It being understood that the prices here named are the same at which any agencies owned or controlled by consignor are authorized to sell to the retail trade corresponding goods in territory named.

In consideration of such agreement on consignee's part to sell in said territory only at such prices as are named in this article, consignee may allow actual freight to any point within the territory named at consignee's own cost and expense.

11. Commission. Consignor will allow and consignee will accept a commission of eight per cent. on the net amount of sales and deliveries of goods consigned hereunder as full compensation, except as hereafter provided, for all matters and things to be

Defendants' Exhibit 1.

ome, and expenditures to be made by consignee; and for said ommission, and in consideration of the premises, consignee ereby covenants and agrees to and with consignor that con- ignee will guarantee payment to consignor for all sales and de- veries made by consignee under this agreement.

It being, however, further understood that, in consideration of rticle 4, relating to freight, consignor will pay to consignee an dditional commission of two per cent. upon the net amount of hipments made by consignee between October 1, 1895, and arch 31, 1896, both inclusive.

12. General Provisions. At the expiration of the time during hich consignor is to make consignments under this agreement uch goods as consignee shall then have on hand shall be held y consignee subject to the order of consignor; but all goods of roken cases shall (if consignor so elects at the expiration of aid time) be purchased by said consignee at the prices herein tated less the amount of commission thereon.

It is hereby agreed by and between the parties hereto, that onsignor shall not be liable in damages for non-fulfillment of rders in case of labor strikes, fire or other casualty, nor for non- ulfillment of orders for any particular class of goods beyond the apacity of consignor to supply, having reference to its whole busi- ess; and should the business of consignee be interrupted by re or other casualty, consignor will, upon request in writing, ancel the orders of consignee then on hand.

The foregoing terms and conditions shall apply to all Candee nd Federal goods consigned by consignor to consignee during he season beginning April 1, 1895, and ending March 31, 1896, and o all goods previously consigned by consignor to consignee; and he prices, discounts and terms named herein (Articles 9, 10), hall also apply in case of sales of all Candee and Federal goods hich consignee now has on hand.

UNITED STATES RUBBER CO.,
WM. B. LAIGHTON,
Selling Agent.

C. H. FARGO & CO.

ccepted:

.....
Director of Sales.

DEFENDANTS' EXHIBIT 2.

(*Offered at p. 246.*)

SUPPLEMENTARY AGREEMENT.

Contract supplementary to above, dated May 2, '95.

The United States Rubber Company, hereinafter called the consignor, in consideration of a certain agreement between and C. H. Fargo & Co., hereinafter called the consignee, dated at Chicago, Illinois, May 2, 1895, hereby covenants and agrees with said consignee that if said consignee shall well and faithfully keep and perform all the undertakings on his part to be performed in said agreement contained, and shall not directly or indirectly violate the same or any provision thereof while it continues in force, said consignor will, as soon after the 1st day of April, 1896, as said consignor is satisfied that said agreement has been faithfully kept and performed by said consignee, pay consignee or credit consignee's account with an additional commission of seven per cent. on the net amount of all goods sold and delivered by said consignee under said agreement.

This seven per cent. shall form no part of settlement between said consignor and said consignee, but it is to be regarded purely in the light of an additional commission, and payable only subject to the conditions herein stated.

Provided, however, that if, in the opinion of said consignor which is to be final and conclusive, said agreement has been in any material respect violated by said consignee, said consignee shall not be entitled to said additional commission of seven per cent.; but shall remit for all goods sold by him under said agreement, as therein mentioned, without further additional commission. It is mutually understood that any freight or cash discount made by said consignee other than as stipulated in said agreement, shall be deemed a violation of its terms as completely and to the same extent as a concession in terms or discount.

And it is also mutually understood that said consignee is to be held responsible for any violation of said agreement by its salesmen.

Dated at Chicago, Illinois, this 2d day of May, 1895.

UNITED STATES RUBBER CO.,
WM. B. LAIGHTON,
Selling Agent.
C. H. FARGO & CO.

Accepted:

.....
Director of Sales.

DEFENDANTS' EXHIBIT 3.

(*Offered at p. 243.*)

Consignment contract between U. S. Rubber Co. and C. H. Fargo & Co., dated April 10, '96, expiring March 31, '97.

Agreement, made this 10th day of April, A. D. 1896, between the United States Rubber Company, hereinafter called "consignor," and C. H. Fargo & Co., of Chicago, Illinois, in the State of , hereinafter called "consignee."

Witnesseth: That consignor and consignee mutually agree as follows:

1. Consignor. Consignor agrees to consign rubber boots and shoes of the following brands:

First quality, Candee Brand.

Second quality, Federal Brand.

Third quality, ———————— Brand.

manufactured or sold by consignor, to consignee, at , to be sold by consignee, on commission, for account of consignor, from date hereof until further notice, not later than March 31, 1897; consignor to deliver all goods at the depot in said on detailed consignment orders therefor to be furnished consignor in writing by consignee, and consignee to receive said goods at said depot and to remove the same at once to consignee's store or warehouse.

2. Consignee. Consignee agrees to pay all expenses of carting, storing, selling and delivering said goods and to keep all said goods while in his custody fully insured at depot, wharf, store or warehouse at consignee's expense by policies approved by and payable to consignor.

3. Sales. All goods to be sold for account of consignor only at prices and discounts, and on terms directed by consignor, and to be billed in name of consignee as consignee.

4. Freight. Actual freight may be allowed by said consignee from any point to any other point of railroad or steamboat delivery at his own cost and expense.

5. Accounts. Consignee shall keep in books specially and exclusively pertaining to the business of this contract, full accounts of all goods received by consignee hereunder and of all sales thereof, and a separate bank account for proceeds of such sales, and it is mutually understood and agreed that all such books and all cash, bills receivable and accounts receivable for proceeds of sales hereunder are at any and all times the property of the consignor, and subject to the right of consignor to take possession of said books, bank account, cash, bills receivable

Defendants' Exhibit 3.

and accounts receivable at any time that in the judgment of the consignor (which shall be absolute and final), such action is necessary to protect the interests of consignor.

6. Statements. Consignee shall render to consignor statements of all sales and deliveries hereunder, as follows:

Sales from April 1, 1896, to October 31, 1896, both inclusive, on or before November 10, 1896; sales and deliveries from November 1, 1896, to December 31, 1896, both inclusive, on or before January 10, 1897; sales and deliveries from January 1, 1897, to March 31, 1897, both inclusive, on or before April 10, 1897.

7. Settlements. Consignee will make advances on account to consignor on request of consignor, in cash or notes approved by consignor, upon said goods on hand and the proceeds of goods sold but not remitted for to consignor, in full for said proceeds and upon call, for goods on hand, and any such advances upon goods shall entitle consignee to a lien thereon to protect such advances, but shall not constitute a purchase by consignee or an indebtedness from consignor. Failure on part of consignee to make such advances, as stipulated above, shall relieve consignor from further obligations to consign goods under this contract.

8. Remittances. Consignee shall remit proceeds to consignor for goods sold and delivered, as follows:

For goods sold and delivered from April 1, 1896, to October 31, 1896, both inclusive, on December 15, 1896; for goods sold and delivered in November and December, 1896, on February 15, 1897; for goods sold and delivered in January, February and March, 1897, on April 15, 1897.

Cash discount of eight per cent. per annum to be allowed for prepayment.

Interest, six per cent. per annum, will be charged on over-due accounts.

9. Discounts. The prices and discounts now established by consignor at which consignee may sell, are as follows:

From April 1, 1896, to March 31, 1897, both inclusive, first quality brands, fifteen per cent.; second quality brands, fifteen and twelve per cent.; and third quality brands, fifteen, twelve and twelve per cent. from gross price list of 1896-1897.

Subject, however, to change by consignor, at any time; and consignee hereby agrees to hold and conform to consignor's prices and discounts as now established, and as hereafter established, in all sales by consignee hereunder.

Defendants' Exhibit 3.

10. Terms. Terms for the present, and until changed by consignor, shall be as follows:

Bills for deliveries between April 1st and October 31st, 1896, both inclusive, shall be dated not later than November 1st net thirty days, one per cent. off for cash in ten days.

If paid prior to November 10th, eight per cent. per annum to November 10th, and the above mentioned one per cent. may be allowed.

If paid between November 10th and December 1st, eight per cent. per annum only may be allowed.

Bills for deliveries between November 1, 1896, and March 31, 1897, both inclusive, shall be payable, net, thirty days from date of shipment, or one per cent. off for cash in ten days; it being understood that the above named discounts for cash are to be at the cost and expense of consignee, and shall not be charged to consignor.

11. Commission. Consignor will allow and consignee will accept a commission of eight per cent. on the net amount of sales and deliveries of goods consigned hereunder as full compensation, except as hereafter provided, for all matters and things to be done, and expenditures to be made by consignee; and for said commission, and in consideration of the premises, consignee hereby guarantees payment to consignor for all sales and deliveries made by consignee under this agreement.

12. General Provisions. At the expiration of the time during which consignor may make consignments under this agreement such goods as consignee shall then have on hand shall be held by consignee subject to the order of consignor; but all goods of broken cases shall (if consignor so elects at the expiration of said time) be purchased by said consignee at the prices herein stated, less the amount of commission thereon.

It is hereby agreed by and between the parties hereto that consignor shall not be liable in damages for non-fulfillment of orders in case of labor strikes, fire or other casualty, nor for non-fulfillment of orders for any particular class of goods beyond the capacity of consignor to supply, having reference to its whole business; and should the business of consignee be interrupted by fire or other casualty, consignor will, upon request in writing, cancel the orders of consignee then on hand.

The foregoing terms and conditions shall apply to all brands consigned by consignor to consignee during the season beginning April 1, 1896, and ending March 31, 1897, and to all goods previously consigned or sold by consignor to consignee; and the

Defendants' Exhibit 3.

prices, discounts and terms named herein (Articles 9 and 10 shall also apply in case of sales of all goods which consignee now has on hand.

N. B. It is hereby understood and agreed to that this contract is absolute between the consignor and the consignee, and annuls, cancels and obliterates any and all contracts, agreements, understandings or practices heretofore in vogue, under which the consignee has heretofore accepted on consignment goods of the brands herein contracted for, and it is distinctly understood that no other contract, agreement, understanding or previous practice prevails in respect to the subject-matter of this contract, except those herein specifically provided.

UNITED STATES RUBBER CO.,
WM. B. LAIGHTON,
Selling Agent.
C. H. FARGO & CO.,
CHAS. E. FARGO, Prest.

(This contract is not binding until approved by director of sales.)

Approved:

.....
Director of Sales.

DEFENDANTS' EXHIBIT 4.

(*Offered at p. 245.*)

SUPPLEMENTARY AGREEMENT.

Contract supplementary to above, dated April 10, '96.

The United States Rubber Company, hereinafter called the consignor, in consideration of a certain agreement between it and C. H. Fargo & Co., hereinafter called the consignee, dated at Chicago, Illinois, April 10, 1896, hereby covenants and agrees with said consignee that if said consignee shall have well and faithfully kept and performed all the undertakings on his part to be performed in said agreement contained, and shall not have directly or indirectly violated the same or any provision thereof while it continues in force, said consignor will, as soon after the 1st day of April, 1897, as said consignot is satisfied that said agreement has been faithfully kept and performed by said consignee, pay consignee or credit consignee's account with an additional commission of 7 per cent. on the net amount of all

Defendants' Exhibit 4.

ds sold and remitted for by said consignee under said agree-
ent.

This 7 per cent. shall form no part of settlement between said
nsignor and said consignee, but is to be regarded purely in
e light of an additional commission for acts performed, and
vable only subject to the conditions herein stated.

Provided, however, that if, in the opinion of said consignor,
hich is to be final and conclusive, said agreement shall have
en in any material respect violated by said consignee, said con-
nee shall not be entitled to said additional commission of
per cent.; but shall remit for all goods sold by him under said
reement, as therein mentioned, without further additional
mmission. It is mutually understood that any freight or cash
scount made by said consignee other than as stipulated in
id agreement, shall be deemed a violation of its terms as
mpletely and to the same extent as a concession in terms or
scount.

And it is also mutually understood that said consignee is to
held responsible for any violation of said agreement by his
nployes.

Dated at Chicago, Ill., this 10th day of April, 1896.

UNITED STATES RUBBER CO.,
WM. B. LAIGHTON,
Selling Agent.

C. H. FARGO & CO.,
CHAS. E. FARGO,
Prest.

This contract is not binding until approved by director of
les.

pproved:

.....
Director of Sales.

DEFENDANTS' EXHIBIT 5.

(Offered at p. 245.)

Letter, C. H. Fargo & Co. to H. M. Sadler, Jr., dated April 27, '96.

"Chicago, April 27, 1896.

. H. M. Sadler, New York:

Dear Sir—We have wired you saying, "Will send notes for
ntire account to-morrow with full explanation."

The reason of our not having done so before is that the present
ceipts of money are not up to our anticipations as we had in

Defendants' Exhibit 5

mind in our last conversation with you. The next succeeding days from that time might change what we would say and plan, but they have not materially done so and we have in the time figured over and worked out a plan to produce the best results for all, making it the best we can see our way to fulfilling. We have made as careful estimates as possible of the funds we shall receive to January, 1897, and of the manner they could be best applied to the payment of your account.

We find that the bunching of too large an amount has been placed in the months of July, August and September, this conclusion being arrived at from the receipts this month, which are one-third less than our calculations, and 40 per cent. less than in same time last year. This is likely to continue, so that we would like to substitute for the notes you have, others, as follows, viz: one note $10,000 due May 15, 1896, and $10,000 the 15th of each succeeding month to and including December 15th; total, $80,000. This will give you $20,000 before you were to have any, and carry $25,000 beyond, but will not require any outlay on your part, as you will have paper on which to get the money and give you $5,000 more this year than you now have. After January 1st we cannot carry on the business profitably and pay you more than $10,000 each month, and we enclose notes in accordance for that portion of account, also hoping you can make it satisfactory to accept them, as it seems the best that we can do:

This, of course, contemplates the payment in cash as fast as collected for present and future sales. We have now paid about $40,000 of your notes just matured and have $5,000 to pay next month, which shall be paid outside foregoing.

We are pushing hard on old accounts, but they come in very slowly. Are keeping merchandise down to lowest possible point, with terms reduced to thirty days, and making every effort to turn product of factory often. As we said to begin with, we have not written before because we wished to be sure of our ground, and our only desire is to be entirely fair and frank with you. We thoroughly appreciate what you have done and are doing for us and wish to have you understand and feel that we are making every effort for your benefit.

If you accept the enclosed notes it is with the understanding that they take the place of all others (except one of 5-15) and that you care for such others as they mature. With the notes

e enclose full statement of how we arrive at settlement, which e hope will be intelligible as well as satisfactory. Defendants' Exhibit 5.

With kindest regards,

Yours very sincerely,

C. H. FARGO & CO.,
CHAS. E. FARGO.

DEFENDANTS' EXHIBIT 6.

(Offered at p. 245.)

Chicago, May 4, 1896. Letter, C. H. Fargo & Co. to H. M. Sadler, Jr., dated May 4, '96.

Mr. H. M. Sadler, Jr., New York:

Dear Sir—Yours of the 1st is just at hand. The notes we sent ou on the 27th ult. we wish to be applied when paid to the udgment notes you now hold. It was an oversight that this as not so stated in our letter with them, which we regret.

Yours very truly,

C. H. FARGO & CO.,
CHAS. E. FARGO."

(Stamp:) "Received May 6, 1896. Answered—."

DEFENDANTS' EXHIBIT 7.

(Offered at p. 245.)

Chicago, May 14, 1896. Letter, C. H. Fargo & Co. to H. M. Sadler, Jr., dated May 14, '95.

Mr. H. M. Sadler, Jr., New York:

Dear Sir—In connection with the notes we are sending you, e beg to say for the purpose of preventing any question about he matter that it was our understanding and the understanding of all concerned at the time the judgment notes were executed by C. H. Fargo & Co. in favor of the United States Rubber Company and L. Candee & Company on or about January 6th last, that such judgments notes should be collateral to and security for any and all liability of C. H. Fargo & Co. to the United States Rubber Company and L. Candee & Company, whether evidenced by open account or by notes or by other notes which might be given for such liability thereafter.

In compliance with your suggestion, the writer consulted Mr. Beale yesterday in regard to best form of note for our mutual interests and we concluded that notes made to our own order and endorsed would fill all requirements. Consequently we enclose an entire new set with the exception of the first two due this

Defendants' Exhibit 7.

month, one of which we have sent money for and money for t other will be sent to New Haven Monday next. It is understo by us that those notes take the place of all others given to o of L. Candee & Company and unpaid.

Please return all except the first two of those sent you Ap 27th.

The $45,000 in notes held by L. Candee & Company for wh one of the judgment notes was given have been paid and at y convenience we would like to have that one returned to us.

We think this puts the matter in proper form which we h will be acceptable to you.

Yours very truly,

C. H. FARGO & Co.,

CHAS. E. FARGO, Pres.

(Rubber stamp:) "Received May 18, 1896. Ans'd. H. M. J. N."

DEFENDANTS' EXHIBIT 8.

(*Offered at p. 246.*)

Letter, C. H. Fargo & Co. to H. M. Sadler, Jr., dated May 15, '96.

" Chicago, May 15, 189

Mr. H. M. Sadler, Jr., New York:

Dear Sir—We would like to add the following as a P. S. to o of yesterday.

We understand, also, that the judgment notes you hold protect you fully in respect to any contingent liability upon notes of C. H. Fargo & Co. which you may have discounted may discount.

This is a suggestion from Mr. Beale's office which we are to follow.

Yours very truly,

C. H. FARGO & Co.,

CHAS. E. FARGO, Pres.

(Rubber stamp:) "Received May 18, 1896. Ans'd H. M. S.

DEFENDANTS' EXHIBIT 9.

(*Offered at p. 251.*)

Draft of proposed written agreement between C. H. Fargo & Co. and Chas. L. Johnson, dated January 6, '96, but never executed.

This agreement, made this 6th day of January, 1896, betw C. H. Fargo & Co., a corporation of the State of Illinois (here after referred to as the Fargo Company) and Charles L. John of New Haven, Connecticut, witnesseth:

Defendants' Exhibit 9.

Whereas, the Fargo Company is indebted to a large amount and is in need of present financial assistance to continue its business, although its officers represent, and the fact appears to be, that it has assets (unavailable, however, for present necessities) largely in excess of its liabilities; and

Whereas, The United States Rubber Company, a corporation, and L. Candee & Company, a corporation, with both of which said Johnson is connected, are among the largest creditors of said Fargo Company; that is to say, the said Fargo Company is indebted to said United States Rubber Company upon open account for the proceeds of consignments in a sum between one hundred and thirty-five thousand ($135,000) dollars and one hundred and forty thousand ($140,000) dollars, the exact amount of which cannot be stated with accuracy, and the said Fargo Company is indebted upon its notes heretofore given payable to L. Candee & Company in the aggregate sum of forty-four thousand nine hundred ($44,900) dollars and interest, upon which notes the said L. Candee & Company, having heretofore discounted the same, is liable as guarantor or endorser to the holders thereof; and

Whereas, the Fargo Company had applied to said Johnson for such assistance and said Johnson is willing to render the same by procuring to be advanced to said Fargo Company the sum of fifty thousand ($50,000) dollars, but only upon the terms and conditions hereinafter specified, and to the end that he and his said two corporations shall, in case the Fargo Company proves unable to extricate itself from its embarrassment within a limited period, be fully protected and preferred to the extent of the total present and future liability, fixed or contingent, of t Fargo Company to them and each of them; and

Whereas, the Fargo Company believes that with the assistance of said Johnson, as herein provided, to be given, it can overcome its present difficulties, and is therefore willing to agree to the terms and conditions as required by said Johnson in consideration of his promise to furnish, and of his furnishing, such assistance;

Now, therefore, it is hereby agreed by and between the said parties as follows:

First. Said Johnson will advance or cause to be advanced to the Fargo Company the sum of fifty thousand ($50,000) dollars, of which sum there shall be furnished ten thousand ($10,000) dollars on the date hereof, ten thousand ($10,000) dollars on or before January 10, 1896, ten thousand ($10,000) dollars on or be-

Defendants' Exhibit 9.

fore January 16, 1896, and the remaining ten thousand ($10,
dollars on or before January 20, 1896; which said advance of
thousand ($50,000) dollars shall be used by the Fargo Compa
to reduce the amount of its indebtedness as it matures. For t
repayment of said fifty thousand ($50,000) dollars to be advanc
in installments as aforesaid, the Fargo Company shall this da
give its several promissory notes to L. Candee & Company a
gregating that amount, which said notes the said L. Candee
Company intends to endorse and discount for the purpose of
taining said sum so to be advanced.

Second. The Fargo Company shall on this date also execu
and deliver its three judgment notes as follows: one note f
one hundred and forty thousand ($140,000) dollars, payable to t
United States Rubber Company, to secure the said indebtedne
to that company; one note for forty-five thousand ($45,000) dolla
payable to L. Candee & Company, to protect and secure that co
pany against its liability upon the said discounted notes of th
Fargo Company heretofore given in the sum of forty-four thousa
nine hundred ($44,900) dollars, and one note for fifty-one thousa
five hundred ($51,500) dollars, payable to L. Candee & Compan
as further security to that company for the fifty thousa
($50,000) dollars herein agreed to be advanced to the Fargo Co
pany as aforesaid, and interest thereon, and to protect and s
cure said L. Candee & Company against its liability upon th
plain promissory notes evidencing such advance, which it is th
purpose of said L. Candee & Company to endorse and discou
Each of said judgment notes to be payable on demand and t
bear interest at six (6) per cent. per annum.

Third. The Fargo Company to further secure said indebted
ness hereby assigns and transfers to said Johnson all such bo
accounts, credits, bills receivable and choses in action as sha
be owned by, or due to, it whenever judgment shall be entere
on said judgment notes, or either of them, in case it ever
entered; and whenever said Johnson or his proxy shall elect t
have judgment confessed upon said judgment notes, under th
provisions of this agreement, the Fargo Company shall execu
and deliver to said Johnson or his said proxy, for the benefit
said two creditor corporations, proper additional assignment
in writing of all such book accounts, credits, bills receivable an
choses in action as shall then be owned by or due to it.

Fourth. The board of directors of the Fargo Company sha
be at once reorganized so that of the seven directors there sha
be five new ones nominated by or acceptable to William G. Bea

Defendants Exhibit 9.

counsel for said Johnson. Charles E. Fargo, one of the present directors, shall remain president of the Fargo Company, as heretofore, and the offices of secretary and treasurer shall be filled by a director or by directors so to be placed in the board at the instance of said Beale. Such directors, or their successors, elected likewise at the instance of said Beale, shall retain their places in said board as long as desired by said Beale, or until they shall resign, under the provisions of this agreement.

Fifth. If, upon the 1st day of July, A. D. 1896, the financial condition and prospects of the Fargo Company shall, in the judgment of the said Johnson, or of his successor or proxy hereinafter referred to, have become sufficiently encouraging to justify such action, the directors and officers of the Fargo Company elected at said Beale's instance shall forthwith properly resign and said judgment notes shall be thereupon canceled and delivered up to the Fargo Company. If, on the contrary, the financial condition and prospects of the Fargo Company shall, in the judgment of said Johnson, or of his successor or proxy, not have sufficiently improved and not have become sufficiently encouraging by said 1st day of July, 1896, to justify further forbearance or non-action in respect to said indebtedness, or if, at any time hereafter prior to July 1, 1896, the happening of any of the contingencies hereinafter specified shall, in the judgment of said Johnson, or of his said successor or proxy, seriously impair the financial standing and credit of the Fargo Company, or endanger the security intended by and through this agreement and through said warrants of attorney to be afforded for said advance of fifty thousand ($50,000) dollars, and for existing and future indebtedness of the Fargo Company to said two creditor corporations with which said Johnson is connected, then, or at any time thereafter, judgment may be confessed and entered upon said judgment notes for whatever respective amounts may then be due said two creditor corporations or the holders of said judgment notes, and for whatever further amounts L. Candee & Company may be liable as guarantor or endorser upon plain notes of the Fargo Company, in consideration whereof said plain notes so guaranteed and endorsed shall be taken care of by L. Candee & Company, and the amounts which shall be paid by L. Candee & Company to take up said plain notes shall be part of the indebtedness included in its judgment notes and the judgment thereon.

Any one of the following specified contingencies shall, at the

Defendants' Exhibit 9.

election of said Johnson, justify the confession of judgment upon said notes prior to July 1, 1896, that is to say:

(a) The execution, except as herein provided, in the name of the Fargo Company, by any of its officers or directors not elected at the instance of said Beale, of any judgment note, or of any warrant of attorney for the confession of a judgment upon a note or account or other liability.

(b) The execution in the name of the Fargo Company by any of its directors or officers not elected at the instance of said Beale, of any mortgage or assignment or other instrument designed and adapted to create any lien or security upon any property or assets of the Fargo Company in favor of any existing or future creditor of the Fargo Company.

(c) The institution or progress of any suit or legal proceeding against the Fargo Company so as to render probable or imminent the issuance of an execution against the Fargo Company, or the establishment of an attachment or other lien upon its property or assets beyond the seeming ability of the Fargo Company to promptly pay the amount of such execution or lien.

(d) The death of Charles E. Fargo with any substantial complication or embarrassments resulting therefrom to the financial affairs of the Fargo Company.

(e) The wilfull and substantial violation by the Fargo Company of any agreement herein made.

Sixth. The Fargo Company and its present officers have represented that there are not now outstanding against it any judgment notes or any instruments in writing of any kind creating any security or lien upon or charge against its property or assets in any way, and that at no time heretofore has the Fargo Company ever executed any judgment notes or other instruments in writing creating such security or lien or charge, excepting only such judgment notes as were with the full knowledge of said Johnson executed in 1893, to the Metropolitan National Bank of Chicago, and to the L. Candee & Company of New Haven, Connecticut.

Seventh. The Fargo Company shall use every reasonable and practicable effort for the speedy collection of accounts and bills receivable, and for the payment and reduction of its indebtedness, and generally for the more economical conduct of its business. The directors and officers elected at the instance of the said Beale shall aid and not interfere with or hamper the proper carrying on of the ordinary and usual business of the Fargo Company substantially as heretofore carried on, but they are ex-

Defendants's Exhibit 9

cted to act as may be necessary to guard and protect the interests of said Johnson and of said two creditor corporations under this agreement.

Eighth. The Fargo Company shall at once open, and shall hereafter keep, separate sets of books to show fully the business done by it under its consignment contract with the United States Rubber Company, in order to keep as required by said contracts the accounts of said consignment business and the moneys of said rubber company at all times separate and distinct so far as possible from the accounts and moneys of the Fargo Company.

Ninth. The judgment of said Johnson shall be conclusive in any and every case wherein the determination of any matter or question is hereinbefore made dependent upon his judgment. In case of the death of said Johnson pending the life of this agreement, the decision of any and every such matter or question shall be committed to the judgment of Houston M. Sadler, and, in like manner and with like effect as if said Sadler had been originally a party to this agreement instead of said Johnson, and in such case all of the rights, title, interest, benefits, powers and duties of said Johnson under this agreement shall devolve upon said Sadler. Said Johnson may, in writing, at any time or times, appoint said Sadler to act as a substitute and proxy for said Johnson in exercising any judgment or any election, or in making any demand, or otherwise, under this agreement, and any judgment or election exercised, or action taken on the part of said Sadler pursuant to this agreement, either in his own name or in the name of said Johnson, by virtue of any such appointment as such proxy, shall be in all respects as valid, effectual and conclusive for the purposes of this agreement as if such judgment or election had been exercised or such action had been taken by said Johnson in person.

Executed in duplicate the day and year first above written.

C. H. FARGO & Co,

By.....

President.

Attest:

.....

Secretary.

Evidence taken before Master.

DEFENDANTS' EXHIBIT 10.

(*Offered at p. 268.*)

Letter, Isham Lincoln & Beale to C. H. Fargo & Co., dated June 3, '96.

"Chicago, June 3d, 1896.

C. E. Fargo, Esq., Pres. C. H. Fargo & Co., Market and Quincy Sts., City:

Dear Sir—We hand you herewith the judgment note for $45,000, executed on January 6th last, by C. H. Fargo & Co., payable to L. Candee & Company, for the purpose of protecting Candee & Company from contingent liability upon the plain notes of the Fargo Company in about that amount which had been discounted and were then oustatnding.

Mr. Sadler instructed us some time ago that the notes, to protect which this judgment note had been given, had all been paid at maturity, and therefore to cancel and deliver up to you said judgment note; but knowing you had gone upon a fishing trip we deferred it until now, when the note can be delivered to you in person.

Very respectfully yours,

(Signed) ISHAM, LINCOLN & BEALE.

DEFENDANTS' EXHIBIT 11.

(*Offered at p. 274.*)

Letter, H. M. Sadler, Jr. to W. G. Beale, dated May 1, '96.

New York, May 1st, 1896.

Mr. William G. Beale, c/o Isham, Lincoln & Beale, Chicago, Ill.

Dear Sir—I enclose you herewith a copy of letter received from C. E. Fargo, President of C. H. Fargo & Co., in which he enclosed notes amounting to $194,130.03; also a carbon copy of my reply to him.

Not wishing to jeopardize our position under the judgment notes given by this company, I would thank you to advise us just what we shall do in addition to what we have done to make our full claim against this company absolute beyond any question of doubt.

Your prompt attention and reply will be more than appreciated by

Yours very truly,

(Signed) H. M. SADLER, Jr.

Dic.

DEFENDANTS' EXHIBIT 12.

(*Offered at p. 574.*)

Chicago, May 5th, 1896.

Letter, W. G. Beal to H. M. Sadler, Jr. dated May 5, '96.

H. M. Sadler, Jr., Esq., 88-90 Reade Street, New York City:

Dear Sir—I beg to acknowledge the due receipt of your favor of the 1st inst. respecting C. H. Fargo & Co.

There is one objectionable error in connection with the new notes transmitted by C. H. Fargo & Co., aside from which we do not think the substitution would jeopardize your position. A part of the Fargo indebtedness represented by the judgment notes was to the United States Rubber Company, and this is secured by a judgment note in favor of that company. The notes which Fargo & Co. have now sent you all run to L. Candee & Company. This will not do. The indebtedness to the two rubber companies should be kept distinct and not subject to confusion. If Fargo & Co. had sent notes running in the proper amounts to L. Candee & Company and to the United States Rubber Company, I should say that you might prudently accept them in substitution of the original notes so far as any legal questions are concerned, for the substantial liability of the Fargo Company, absolute and contingent, would not thereby be changed, and it is this substantial liability which the judgment notes were intended to secure. Some time ago the indebtedness upon an open account to the United States Rubber Company was put into the form of a note or notes, and I remember saying, either to you or Mr. Johnson at that time, that I thought a letter ought to be written by the Fargo Company, or Mr. C. E. Fargo, saying that it was the intention that the judgment note in favor of the United States Rubber Company should secure the indebtedness in whatever form it might stand, and whether absolute or contingent. I am now under the impression that you did not obtain such a letter at the time, but I still think, as a matter of precaution, it would be worth while to have such a letter to meet possible future questions in case the Fargos should hereafter go to the wall. I propose to prepare two such letters as I have in mind, one to be addressed to the Candee Company, and one to be addressed to the United States Company, to be signed by the Fargos as stockholders in the company, merely declaring broadly that it was their intention when the judgment notes were given that they should protect all this indebtedness in whatever form it might from time to time be, and whether the liability should at any time be absolute or merely

Defendants' Exhibit 12

contingent. With the new notes properly distributed betwe the two companies, and with such letters, I do not see why companies are not as safe as human foresight can well ma them without closing down on the Fargo Company and driv it out of business.

I have been watching the action of congress upon the ban ruptcy bill, with the thought in mind that, if enacted into a l someof its provisions might possibly affect the relations betwe your companies and the Fargo Company, but such a contingen as this is one that nobody can well provide for, and, moreov it is very unlikely, for the probability is that the bankrupt bill will not become a law.

Very truly yours,

(Signed) WILLIAM G. BEALE.

P. S. Since dictating the above, I have telephoned Mr. Fa to explain to him that, for precaution, you asked my opini about this substitution of notes, and to explain to him the n cessity of distributing the notes between the two compani and the desirability of such letters as I have mentioned. H expresses an entire willingness to have the matter kept in su shape as will be satisfactury and safe for us, and will accordin send such letters as we may prepare, and, also, if you des and so request, such new notes as may properly represent t division of the indebtedness. There is only one thing abo which I wish to caution you in this connection, and that i not to let the Fargo indebtedness increase, because any su increase probably would not be protected by the judgment not W. G. B.

DEFENDANTS' EXHIBIT 13.

(*Offered at p. 274.*)

Chicago, Ill., May 8, 189

Letter, W. G. Beale to H. M. Sadler, Jr., dated May 8, '96.

To H. M. Sadler, 88 Reade street, New York City:

Letter of 6th received. You now doubtless have my letter 5th, which is probably sufficient answer. Candee and Unit States indebtedness must not be confused in dealing with Far although the two companies may deal between themselves they please. Notes might all be made payable to Fargo Co. and endorsed in blank, but if name of payee inserte which is preferable, they should run properly to the two co panies according to exact indebtedness. Suggest you obta new notes so far as necessary to cover this point.

WILLIAM G. BEALE.

DEFENDANTS' EXHIBIT 14.

(*Offered at p. 274.*)

Letter, H. M. Sadler, Jr., to W. G. Beale, dated May 16, '96.

New York, May 16th, 1896.

Wm. G. Beale, Esq., c/o Isham, Lincoln & Beale, 718 The Tempel, Chicago, Ill.:

Dear Sir—Your favor of the 14th inst., came duly to hand, and contents carefully noted. Thanks very much for the detailed information and instructions covering the whole situation. We will be very careful and guided accordingly.

Regarding the consignment stock, which Fargo had been selling since January 1st, I understood from him when in Chicago that he was keeping separate books and collecting the money and placing it to a special account in his bank, as per his agreement, and that he would forward us in a few days a check for the amount collected.

Any advice you have to give concerning this will be very much appreciated.

Very truly yours,
(Signed) H. M. SADLER, Jr.

DEFENDANTS' EXHIBIT 15.

(*Offered at p. 274.*)

Letter, H. M. Sadler, Jr., to W. G. Beale, dated May 16, '96.

New York, May 16, 1896.

Wm. G. Beale, Esq., c/o Isham Linclon & Beale, 718 The Temple, Chicago, Ill.:

Dear Sir—I neglected in mine of this a. m. to advise you to surrender to Fargo the judgment note for $45,000, which we hold against notes which have now run off and been paid. Will you kindly do so?

Very truly yours,
(Signed) H. M. SADLER, Jr.

DEFENDANTS' EXHIBIT 16.

(*Offered at p. 274.*)

Telegram, W. G. Beale to H. M. Sadler, dated Jul 16 or 15, '96.

Chicago, July 16th (15th), 1896.

To H. M. Sadler, Jr., care United States Rubber Co., 90 Reade St., New York:

Metropolitan Bank has asked Fargo Company, because of al-

Defendant's Exhibit 16.

leged tight money market, to pay note for ten thousand dolla due July 21st. Fargo Company unable to pay and extension m be refused. Fargo promises to keep me informed so that necessary judgments can be entered on our judgment note Better wire me amounts now owing respectively to United Stat and Candee Companies, including any discounted notes which they are liable as endorsers. Better also wire me auth ity to take whatever steps I may think necessary for protecti of companies. Possibly you or Mr. Johnson better come here.

(Signed) WILLIAM G. BEALE

DEFENDANTS' EXHIBIT 17.

(Offered at p. 274.)

Telegram, H. M. Sadler, Jr. to W. G. Beale, dated July 16, '96.

New York, July 16, 189

Wm. G. Beale, or Isham, Lincoln & Beale, 718 The Temple, Ch cago, Ill.:

Will be Chicago Sunday night and see you Monday morni with all papers relating to Fargo situation; judgment notes w cover amount due this company at present time as far as w know; should any action be required before I arrive use your le judgment for interests of this company.

(Signed) H. M. SADLER, Jr.

DEFENDANTS' EXHIBIT 18.

(Offered at p. 274.)

Telegram, W. G Beale to H. M. Sadler, Jr., dated July 17, '96.

Chicago, July 17th, 189

To H. M. Sadler, Jr., care United States Rubber Co., 90 Read Street, New York:

Fargo advises us has just received pleasant letter fro Metropolitan Bank, agreeing to extend note due on 21st instan This apparently leaves matter all right for the present.

(Signed) WILLIAM G. BEALE

DEFENDANTS' EXHIBIT 19.

(*Offered at p. 366.*)

Statement of general account, C. H. Fargo & Co. with U. S. Rubber Co.

s. C. H. Fargo & Co., Chicago, Ill., in account with United es Rubber Co., 84 to 90 Reade St.

20	Mdse., net, as per bill No..	2,474	26	65
23	" " "	13,408	39	74
23	" " "	13,384	635	17
27	" " "	14,789	234	33
30	" " "	15,112	147	73
31	" " "	15,254	1,095	70
9	" " "	18,407	89	38
10	" " "	18,584	339	26
12	" " "	19,416	55	96
21	" " "	22,484	22	92
24	" " "	23,450	190	42
26	" " "	24,477	60	62
28	" " "	25,122	62	18
29	" " "	25,634	72	28
30	" " "	27,008	154	57
31	" " "	27,537	100	55
30	" " "	26,994	19	43
31	" " "	27,773	27	98
t. 30	" " "	32,083	29	19
1	" " "	35,295	59	89
. 22	" " "	47,412	49	84
. 5	" " "	50,900	53	40
10	" " "	53,300	72	84
11	" " "	52,424	55	03
t. 30	Sales from April 1st, Candee.....		62,060	37
t. 30	Sales from April 1st, Federal.....		22,224	40
t. 30	Sales from April 1st, net, Candee		1,518	30
c. 31	Sales Oct., Nov. and Dec., Candee		36,686	69
c. 31	Sales Oct., Nov. & Dec., Federal		14,485	01
c. 31	Sales Oct., Nov. & Dec., net, Candee		867	30
	Amt. owing Jany. 6th, 1896.....			$141,537 13
896.				
h. 31	Sales Jany. 1st to Mch. 31st, Candee	$19,216 10		
	31 Sales Jany. 1st to Mch. 31, Fed.	5,179 34		
	31 Sales Jany. 1st to Mch 31, net Candee	138 60		
	Amt. owing March 31st, 1896.			24,534 04

Defendants' Exhibit 19.

To interest December 31st to August 6th on $141,537.13 at 6 %			$ 5,166 10	
To interest Mch. 31st to August 6th, on $24,534.04 at 6 %			519 30	5,6
				$171,3
Credit.				
Mch. 30.	By freight	$ 17		
Apl. 30.	By freight	7 25		
			$ 7 42	
Interest to August 6th at 6 %			29	
Apl. 1.	By 7 % rebate on $139,151.53		9,740 61	
By interest on $9,740.61 to August 6th at 6 %			206 17	
Apl. 1.	By 7 % rebate on $24,395.44		1,707 68	
By interest on $1,707.68 to August 6th at 6 %			36 15	
June 22.	By note paid		5,000 00	
By interest to August 6th at 6 %			37 50	
July 8.	By note paid		5,000 00	
By interest to August 6th at 6 %			24 17	
20.	By note paid		5,000 00	
By interest to August 6th at 6 %			14 17	$ 26,3
Due August 6th, 1896				144,9

The following amount ($2,331.68) represents the differenc
tween balance on consign account March 31, 1896, and an
of goods returned to factory:

To merchandise, Candee	$ 949 22	
To merchandise, Federal	1,178 61	
To merchandise, net Candee	352 80	
	$ 2,480 63	
Less 7 % rebate	148 95	
Due December 15, 1896		2,3

Tennis Account Not Included Above.

1895.			
Dec. 28.	To mdse. gross	58,294	$ 45
1896.			
Feb. 7.	To mdse. gross	65,360	16 80

7.	To mdse. gross.....65,363	21 60		
25.	To mdse gross.....67,287	45 60		
		$ 84 45		
	Less 20 %.....	16 89		
			$ 67	56
May 2.	To mdse. gross.....2,750	223 20		
2.	To mdse. gross..... 2,759	265 20		
11.	To mdse. gross..... 3,313	184 80		
		673 20		
	Less 20 %.....	134 64	538	56
	Due September 1, 1896...		$606	12

Memo.

1896.	Credit.			
Aug. 12.	By cash.....$	5,494 50		
	By freight.....	90		
	$	5,495 40		

Memos. of Rebates.

Amt. owing January 6, 1896.....$141,537 13				
Less net goods.....$1,518 30				
Less net goods..... 867 30		2,385 60		
7 % on.....	$139,151	53	$ 9,740	61
Amt owing March 31, 1896.....$	24,534	04		
Less net goods.....	138	60		
7 % on.....$	24,395	44	$ 1,707	68
Balance of mdse. as per stat .....$	2,480	63		
Less net goods.....	352	80		
7 % on.....$	2,127	83	$ 148	95

Recapitulation of Account:

Amt. due August 6, 1896.....$144,982 41			
Balance of mdse. due December 15th.....	2,331	68	
Tennis account mdse. due September 1st..	606	12	
	$147,920	21	
August 12th cash and freight.....	5,495	40	$142,424 81

DEFENDANTS' EXHIBIT 20.

(*Offered by complainants at p. 372.*)

Statement of assignment account C. H. Fargo & Co. with U. S. Rubber Co.

M—C. H. Fargo & Co., Chicago, Ill., in account with United States Rubber Company, 84 to 90 Reade street.

Candee.

1896.				
Jan.	7.	mdse., net as per bill No.	.....	$1,045 20
	8.	"	"	..... 1,195 20
	9.	"	"	..... 799 20
	10.	"	"	..... 619 20
	11.	"	"	..... 698 40
	13.	"	"	..... 483 60
	14.	"	"	..... 613 20
	15.	"	"	..... 323 40
	16.	"	"	..... 270 00
	17.	"	"	..... 213 00
	18.	"	"	..... 342 00
	20.	"	"	..... 360 00
	21.	"	"	..... 370 80
	22.	"	"	..... 337 20
	23.	"	"	..... 250 80
	24.	"	"	..... 672 00
	25.	"	"	..... 415 20
	27.	"	"	.... 489 60
	28.	"	"	..... 234 00
	29.	"	"	..... 513 60
	30.	"	"	..... 250 80
	31.	"	"	..... 242 40
Feb.	1.	"	"	..... 54 00
	1.	"	"	..... 199 80
	25.	"	"	..... 4 35
	27.	"	"	..... 76 80
	28.	"	"	..... 141 60
	29.	"	"	..... 43 20
Mch.	2.	"	"	..... 108 00
	3.	"	"	..... 250 80
	4.	"	"	..... 96 00
	4.	"	"	..... 36 00
	5.	"	"	..... 62 40

Defendants' Evidence—Exhibits.

Mch.	7.	Mdse., net as per bill No.....	163	20	Defendants's E 20.
	9.	" "	94	80	
	10.	" "	70	80	
	11.	" "	242	40	
	12.	" "	146	40	
	13.	" "	177	60	
	28.	" "	189	60	
	28.	" "	39	60	
	31.	" "	10	80	
Apl.	2.	" "	163	20	
	4.	" "	48	00	
	4.	" "	23	30	
	4.	" "	19	20	
	9.	" "	10	80	
	8.	" "	6	05	
	16.	" "	3	30	
	21.	" "		45	
May	23.	" "	12	00	
	27.	" "	26	40	
	28.	" "	69	10	
	29.	" "	19	20	
June	4.	" "	19	20	
	6.	" "	56	40	
	8.	" "	10	35	
	9.	" "	10	80	
	10.	" "	35	00	
	11.	" "	20	20	
	12.	" "	24	00	
					$13,523 90

Federal.
1896.

Jan.	7	Mdse., net, as per bill No.....	454	80
	8	" "	729	60
	9	" "	381	60
	10	" "	248	40
	11	" "	284	40
	13	" "	267	60
	14	" "	120	00
	15	" "	228	00
	16	" "	129	60
	17	" "	93	60
	18	" "	30	00

efendants' Exbit 20.

Jan.	22	Mdse., net, as per bill No.	.....	25	20
	23	"	.....	144	00
	24	"	.....	122	40
	25	"	.....	52	80
	27	"	.....	90	00
	28	"	.....	27	60
	29	"	.....	7	20
	31	"	.....	176	40
Feb.	1	"	.....	136	80
	1	"	.....	144	00
Mch.	13	"	.....	180	00
	26	"	.....	13	80
	28	"	.....	144	00
	28	"	.....	216	00
	31	"	.....	39	60
	31	"	.....	29	00
Apl.	4	"	.....	93	15
	16	"	.....	3	30
	18	"	.....	1	50
May	25	"	.....	26	40
	26	"	.....	57	60
June	3	"	.....	13	20
				$4,711	5

DEFENDANTS' EXHIBIT 21.

(*Offered at p. 376.*)

ssignment of ook accounts, etc . H. Fargo & Co., U. S. Rubber o., dated Aug. '96.

Chicago, Illinois, August 6th, 1896.

In consideration of one (1) dollar, and other good and valuable considerations, C. H. Fargo & Co., a corporation of Chicago, Illinois, does hereby sell, assign, transfer and set over unto the United States Rubber Company, a corporation of New Jersey, each and all of the book accounts, credits and choses in action now due and owing to said C. H. Fargo & Co., as collateral security to the indebtedness of said C. H. Fargo & Co., to said United States Rubber Company; giving and granting unto said United States Rubber Company full power and authority to collect and receipt for said accounts, credits and choses in action, and to bring suit in the name of C. H. Fargo & Co., or otherwise to enforce collection of the same.

C. H. FARGO & CO.,
By CHAS. E. FARGO, Prest.

DEFENDANTS' EXHIBIT 22.

(*Offered at p. 399.*)

Letter, C. H. Fargo & Co. to Isham, Lincoln & Beale, dated Aug. 8, '96, with estimated inventory of Dixon Factory on Aug. 6, 96.

C. H. FARGO & CO.
Manufacturers of Boots and Shoes,
196, 198, 200 Market Street, Chicago.

Dixon, Ill., August 8, 1896.

(Rubber Stamp reading:)
Isham, Lincoln & Beale,
Chicago, Aug. 10, 1896.

sham, Lincoln & Beale,
718-184 LaSalle St.,
Chicago, Ills.:

Gentlemen—Complying with request of your Mr. Isham when e on Friday, we have completed an estimated statement of at the inventory should be on August 6th, as compared with y 3d, in this factory. You will notice in statement we have own on July 3d, $165,978.51. The total amount of goods re- ived and pay rolls, including the pay roll due for the last k's work, $8.690.63. This would make a total addition, in- ding the inventory of July 3d, of $174,669.14. The total amount goods returned, that is material. leather, etc., $5,041.44 and the nufactured goods shipped to C. H. Fargo & Co., $14,880.49, king a total credit of $19.921.93. This amount deducted from inventory of July 3d plus the amount of goods received, and y rolls, to wit, $174,669.14, would leave a balance in the factory 154,747.21, subdivided as shown in the statement above on the et enclosed herewith.

In some places we had to make proportionate estimates as mpared with the July 3d inventory. This inventory, of course, on the basis that the factory run even for the last month with loss or gain.

We sincerely trust this gives you the information that you sire.

Respectfully,
C. H. FARGO & CO.,
(Signed) J. C. JOCELYN.

Dictated by J. C. J.

(Signature identified by C. E. Fargo March 22, 1898. H. W. B.)

The statement enclosed with said letter is as follows:

Factory, Dixon, Ill., August 6th, 1896.

Estimated inventory of the Dixon factory August 6th, 1896, as mpared with inventory of July 3d, 1896:

Defendants' Exhibit 22.

Upper leather		$ 21,43
Gore, lining and facing		3,09
Sole leather		12,39
Findings		8,15
Cartons, cases & labels		78
Labor		3,13
Labor expense		69
Freight, cartage & express		1,34
Expense		2,42
Machinery		29,53
Machinery and tools expense		4,13
Furniture and fixtures		4,50
Last, dies and patterns		20,92
Building and grounds		27,80
Building and grounds expense		1
Driving, heating and lighting		10,78
Royalties		7
August 6th, 1896, total		$154,74
Inventory July 3d, 1896	$165,978 51	
Received, returned & shipped to Aug. 6th, 1896, goods and pay rolls received and pay rolls due	8,690 63	
		174,66
Goods returned, etc	$ 5,041 44	
Goods shipped as per product bills	14,880 49	
		19,92
		$154,74

CERTIFICATE OF THE MASTER.

Master's certificate.

United States of America, } ss.
Northern District of Illinois. }

IN THE CIRCUIT COURT OF THE UNITED STATES,

Northern District of Illinois.

American Oak Leather Company } In Chancery.
vs. } No. 24,238.
C. H. Fargo & Co. et. al. }

To the Honorable P. S. Grosscup, Circuit Judge:

I hereby certify that the foregoing is the evidence referred to in my report filed this day in the above entitled cause, and constitutes the proceedings and evidence had and taken before me in said cause under the order of reference entered therein on November 29, 1898.

Dated, Chicago, April 17, 1899.

HENRY W. BISHOP,
Master in Chancery
For U. S. Circuit Court,
Northern District of Illinois.

629 And on, to wit, the 18th day of April, 1899, there was fi
in the office of the Clerk of said Court Exceptions of City N
tional Bank of Dixon to Master's Report of April 17, 1899, in t
following words and figures, to wit:

IN THE CIRCUIT COURT OF THE UNITED STAES O
AMERICA.

For the Northern District of Illinois.

Northern Division.

American Oak Leather Company,
vs.
C. H. Fargo and Company, a corporation, Dixon National Bank, City National Bank, et al. } In Chancery, No. 242

Exceptions of City National Bank of Dixon to Master's Report, filed April 18, 1899.

Exceptions taken by the above named defendant, the City N
tional Bank, to the report of the Master in Chancery, to whom th
cause was referred to take proof, etc., on the twenty-ninth day
November, A. D. 1897, which report bears date the seventh day
April, A. D. 1899.

First Exception: For that the said Master has failed to repo
that the City National Bank, a corporation located and doing bu
ness in the City of Dixon, state of Illinois, did, on the Tenth da
of June A. D. 1896, loan to the said C. H. Fargo & Company,
corporation, the sum of Ten Thousand Dollars, with interest
seven per cent. per annum, and that the said loan was obtained fro
the said City National Bank by the said C. H. Fargo & Company,
corporation, by actual fraud, in that the said C. H. Fargo & Co
pany, through one of its officers, led the cashier of the said Ci
National Bank to believe that the said C. H. Fargo & Company,
corporation, was solvent, and had given no judgment notes, and
relying upon said belief, the said City National Bank, through
cashier, made the above mentioned loan.

Second Exception: The City National Bank, also, excepts to th
said report, because the said Master did not in his said report fin
that the said City National Rank is entitled to recover, as a pr
ferred claim, in the settlement of the said affairs of the said C. H.
Fargo & Company, a corporation, the sum of Ten Thousand Dollars
with interest thereon at seven per cent. per annum, from the tent
day of June, 1896.

Third Exception: Said City National Bank further excepts to said report, because the said Master did not therein find that the said C. H. Fargo & Company, had fraudulently obtained said loan by fraud in fact, and that the said United States Rubber Company, a corporation and L. Candee & Company, a corporation, were parties to said fraudulent conduct. Exceptions of City National Bank of Dixon to Master's Report, filed April 18, 1899.

Wherefore, the said defendant, City National Bank, does except to the said report, and appeals therefrom to the judgment of this Court.

MORRISON & BETHEA,
Solicitors for Defendant.

(Endorsed) Filed, April 18, 1899.

S. W. BURNHAM,
Clerk.

And on the eighteenth day of April, 1899, came the Dixon National Bank by its solicitors and filed in the clerk's office of said Court its exceptions to the Master's report, which said Exceptions are in the words and figures following to wit:

EXCEPTIONS OF DIXON NATIONAL BANK TO MASTER'S REPORT.

Exceptions of Dixon National Bank to Master's Report, filed April 18, 1899.

IN THE CIRCUIT COURT OF THE UNITED STATES OF AMERICA,

For the Northern District of Illinois,

Northern Division.

American Oak Leather Company,
vs.
C. H. Fargo & Company, a corporation, Dixon National Bank, City National Bank, et al. } No. 24238

Exceptions taken by the above named defendant, the Dixon National Bank, to the report of the Master in Chancery, to whom this cause was referred to take proof, etc., on the 29th day of November, A. D. 1897, which report bears date the seventeenth day of April, A. D. 1899.

First Exception: For that the said Master has failed to report

Exceptions of Dixon National Bank to Master's Report. filed April 18, 1899.

that the Dixon National Bank, a corporation located and doi
business in the City of Dixon, State of Illinois, did, on the fou
teenth day of June, 1896, loan to the said C. H. Fargo & Co
pany, a corporation, the sum of Thirty-five hundred dollars, wi
interest at seven per cent per annum, and that the said loan was o
tained from the said Dixon National Bank by the said C. H.
632 Fargo & Company, a corporation by actual fraud, in that th
said C. H. Fargo & Company, through one of its officers, stat
to the cashier of the Dixon National Bank at and before the time t
obtained the said loan, that his said corporation was absolutely s
vent, and had given no judgment notes, and relying upon said stat
ment of the said officer of said corporation the Dixon National Ban
through its cashier, made the above mentioned loan.

Second Exception: The Dixon National Bank, also, except
said report, because the said Master did not in his said report fin
that the said Dixon National Bank is entitled to recover as a pr
ferred claim, in the settlement of the said affairs of the said C. H.
Fargo & Company, a corporation, the sum of thirty-five hundr
dollars, with interest thereon at seven per cent per annum, from th
sixteenth day of August, 1896.

Third Exception: Said Dixon National Bank further excepts
said report, because the said Master did not therein find that th
said C. H. Fargo & Company, had fraudulently obtained said lo
by fraud in fact, and that the said United States Rubber Compan
a corporation, and L. Candee & Company, a corporation, were
partners to said fraudulent conduct.

Wherefore, the said defendant, Dixon National Bank, does ex
cept to the said report, and appeals therefrom to the judgment o
this Court.

MORRISON & BETHEA,
Solicitors for Defendan

(Endorsed) Filed Apr. 18, 1899.

S. W. BURNHAM,
Clerk

633 Afterwards, to-wit, on the 20th day of April, 1899, the
was filed in the office of the Clerk of said Court Exceptions t
the Report of Henry W. Bishop, Master in Chancery, in the fo
lowing words and figures, to-wit:—

Exceptions of American Oak Leather Co. et al. to master's report, filed April 20, 1899.

United States of America,
Northern District of Illinois,
Northern Division. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES,

Northern District of Illinois,

Northern Division.

American Oak Leather Company
vs.
C. H. Fargo & Co. et al. } No. 24,238. In Chancery.

EXCEPTIONS.

To the report of Henry W. Bishop, Master in Chancery, filed in said cause on the 17th day of April, A. D. 1899.

Now come the American Oak Leather Company, Complainant herein, and Barbour Bros. Company, Boston Blacking Co., Bulletin of Good Roads, Carson, Pirie, Scott Monthly Co., Carver Cotton Gin Co. Calvert Lithographing Co., Chase, Merritt & Co., B. E. Cole & Co., Colburn, Fuller & Co., Consumer's Box Manufacturing Co., Continent Shoe Company, Crooks, Root & Company, Cycling Gazette, Easton Boot & Shoe Company, Estabrook, Anderson Shoe Co., Farnsworth, Hoyt & Co., I. P. Farnum, C. C. Farwell & Co., P. A. Field & Co., Fletcher Manufacturing Company, A. T. Gallum & Sons, H. M. George & Co., Goldsmith, Rosenbush & Levie, Goodyear Rubber Co., R. J. Gunning Co., M. L. Hiller & Sons, Lambeau Leather Company, A. J. Marcus & Co., J. & H. Mayer, H. Michaels & Co., Milwaukee Tack Co., W. J. McBride, New York Shield Company, Pliable Shoe Company Regent Manufacturing Company, Rousmaniere, Williams & Co., Shattuck & Binger, A. W. Shaw & Co., T. J. Shay & Co., Singer Manufacturing Company, W. W. Spaulding, Spinney, Virtue & Co., Stowe, Bills & Hawley, Thilmany Pulp & Paper Mills, Tubular Rivet & Stud Co., University of Chicago Weekly, George H. Van Pelt, Wachusett Mills, Weir Brothers Paper Company, Gus Wennerstrom, Consolidated Hand Method Lasting Machine Company, Hilliad & Merrill, Tripp Giant Leveller Company, Dry Goods Reporter Company, E. H. Van Ingen & Company, Intervening Creditors herein, by Newman, Northrup & Lev-

Exceptions of American Oak Leather Co et al. to master's report, filed April 20, 1899.

inson, their Solicitors, and jointly and severally except to said r
port, and each and every finding therein, and for grounds of exc
tion show to the Court the following:

1. For that the Master finds that the inquiry in this case is li
ited to the period commencing on the 6th day of January, 18
and ending on the 6th day of August, 1896;

Whereas the Master should have found that said inquiry proper
includes a period commencing in 1893 and ending in Augus
1896.

2. For that the Master finds that about January 2, 1896, t
Fargo Company, anticipating difficulty in meeting its regular ob
gations maturing during that month, applied to one Charles L
Johnson, who represented both the Candee Company and the Unit
States Rubber Company, for a loan of $50,000.00, representin
that the Fargo Company was perfectly solvent, and that this s
commodation would relieve it from its temporary embarrassment
and enable it to go on with its business;

Whereas the Master should have found that about January
635 2, 1896, the Fargo Company was insolvent and was about t
suspend business, and on that account caused said Charles L
Johnson and H. M. Sadler, representing the two Rubber Companies
to come to Chicago, and at a series of meetings held at the Auditor
ium Hotel in Chicago, at which were present Charles L. Johnso
and H. M. Sadler, Chicago Counsel of the two Rubber Companies
and Charles E. Fargo, representing the Fargo Company, disclose
to said Johnson and Sadler and the Rubber Companies' Counsel th
fact that the Fargo Company was then greatly embarrassed an
unable to meet its maturing obligations, and unless it received im
mediate financial assistance, would be compelled to fail.

3. For that the Master finds that on January 6, 1896, Charle
L. Johnson agreed, acting for L. Candee & Company, to loan to C
H. Fargo & Company the sum of $50,000.00 for six months;

Whereas the Master should have found that the financial assis
ance which the Candee Company furnished the Fargo Company i
January was not, in fact, a loan of money, but was substantially a
follows, viz: The Fargo Company executed and delivered it
promissory notes to the Candee Company, aggregating $50,000.00
which notes the Candee Company indorsed and discounted for the
purpose of obtaining said $50,000.00, and when obtained, turned
the same over to the Fargo Company.

Exceptions of American Oak Leather Co. et al. to master's report, filed April 20, 1899.

4. For that the Master, in attempting to set forth the January rangement with respect to the action of the new directors, se- ted in the interest of the Rubber Companies, fails to find that it s then agreed, as a part of the January arrangement, that the directors were to be the direct representatives of the Rubber Companies, and to act as the Rubber Companies, or their counsel might deem necessary from time to time, to guard and protect the interests of the Rubber Companios, to the exclusion all other creditors;

Whereas the Master should have so found.

5. For that the Master fails to find that it was a part of the nuary arrangement that of the seven directors of the Fargo Com- ny, five new directors should be nominated and controlled by the bber Companies or their counsel, and act primarily in their in- rest, and that Charles E. Fargo should remain, or be re-elected esident, F. M. Fargo and Edward A. Fargo (who were respect- ely Treasurer and Secretary of the Fargo Company), should re- e, and that one of the new directors so to be nominated by the bber Companies, should be elected Secretary and Treasurer in ace of F. M. and E. A. Fargo;

Whereas the Master should have so found.

6. For that the Master finds that the change of the Board of rectors and the officers and the changes of the by-laws of the rgo Company and the resolution authorizing the judgment notes d assignment of accounts were all for the purpose of giving referential security to the Rubber Companies, and that the only rpose of changing the Board of Directors and amending the by- ws was to protect the Rubber Companies against the giving by e Fargo Company of preferential securities or judgment notes to her creditors which should be superior to the security of the bber Companies;

Whereas the Master should have found that the change in the rsonnel of the Board of Directors and in the by-laws of the Com- ny was made for the purpose of withdrawing from the officers of the compony all power of giving to any other creditor security r for his debt and for the purpose of preventing other creditors from collecting their claims until the claims of the Rubber mpanies were paid in full, and for the purpose of placing the rgo Company and all its assets, in the absolute control of the two bber Companies, so that the two Rubber Companies might make

Exceptions of American Oak Leather Co. et al. to master's report, filed April 20, 1899.

any disposition of the Fargo Company and its assets which th saw fit, in their own interest, and to the exclusion of all other cr itors.

7. For that the Master finds that the change in the Board Directors and officers, and the changes in the by-laws of the Fa Company, were kept secret in order to allow the Fargo Company opportunity of getting through embarrassments apparently te porary but not with a fraudulent intent as to the other creditors the company;

Whereas the Master should have found that in order to secu and preserve the credit of the Fargo Company and to enable it s its agents to purchase merchandise on credit after January 6, 18 it was expressly understood and agreed and insisted upon as a pa of said January arrangement, by all parties thereto, that the sa should be kept and maintained secret and unknown to the wor and that the same were so kept and preserved secret and unkno to the world, with a fraudulent intent as to the other creditors the Fargo Company.

8. For that the Master finds that the arrangement as made b tween the Rubber Companies and the Fargo Company, was carr out in good faith by the parties;

Whereas the Master should have found that the arrangement w not in good faith, but was in furtherance of a plan to hinder, del and defraud other creditors, and especially to draw in future cr itors with the intention of getting their property and not
638 paying for the same, if the Rubber Companies found such a tion necessary to protect themselves.

9. For that the Master finds that between January 6, and Au gust 6, 1896, the Fargo Company continued its business as b fore;

Whereas the Master should have found that prior to January 1896, the Fargo Company and its officers were in absolute contr of its business and affairs, and had not entered into arrangement like or similar to the January arrangement. And whereas als the Master should have found that after January 6, 1896, Charl E. Fargo and his brothers were the mere agents and representativ of the Rubber Companies, subject at all times through the ne Board of Directors, to the control of the two Rubber Companies.

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10. For that the Master finds that the indebtedness incurred by Fargo Company for goods purchased after January 6, 1896, ch remained unpaid on August 6, 1896, was only $142,690.95;

Whereas the Master should have found that the amount of said ilities remaining unpaid on August 6, 1896, exceeded $172,-00.

11. For that the Master finds that between January 6, and Au-st 6, 1896, the Fargo Company reduced its general indebtedness considerable extent;

Whereas the Master should have found that there is no legal ev-nce in the record showing whether the Fargo Company did, or not reduce its said general indebtedness.

12. For that the Master finds that the Rubber Companies were in orance of the fact that on January 6, 1896, the assets of the rgo Company were insufficient to discharge its indebtedness;

Whereas the Master should have found that the insolvency of the Fargo Company and its then imminent suspension were the first facts called to the attention of the Rubber Companies January at the Auditorium meetings, and were the reasons why e Rubber Companies' representatives were summoned to Chi-go.

13. For that the Master finds that the fact that Johnson (repre-ting the Rubber Companies), made no detailed examination of e assets of the Fargo Company, is evidence to his mind that John-n believed in the lead pencil figures given him by Charles E. rgo at the Auditorium meetings as to the then condition of the rgo Company;

Whereas, the Master should have found that on January 2, 1896, e Fargo Company was insolvent and would have failed at that me, but for the January arrangement, and that Johnson then pur-sely refused to make any investigation into the affairs of the rgo Company, because such investigation would have brought me to the Rubber Companies direct and complete knowledge of e then financial condition of the Fargo Company, and with such rect and complete knowledge in detail, the Rubber Companies ould not have claimed (as they now claim), that they relied upon e meager figures furnished Johnson and Sadler at the Auditorium terviews.

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And, whereas, also the Master should have found that on or abo January 2, 1896, the Rubber Companies claimed to have, in t possession of the Fargo Company, consigned merchandise to t amount of about $125,000.00, and held other claims against t Fargo Company in the sum of over $188,000.00, making a total over $300,000.00, the greater part of which the Rubber Compani then well knew would have been lost to them if the Fargo Co pany had at that time suspended business and made an equita distribution of all its assets ratably among all its creditors, Charles E. Fargo then threatened to do, and that it was in the bo of appropriating to themselves all the then property of the Far Company, and all the property which the Fargo Compa
640 might thereafter obtain on credit, that the Rubber Co panies entered into the January arrangeme[illegible].

14. For that the Master finds that the evidence of $50,000. and the giving of the judgment notes and securi[illegible] in question, w the result of an evident feeling on the part of all the parties to t transaction, and in the belief and expectation on their part, t through the assistance which was in this way afforded the Far Company, it would be enabled to continue its business successfull and become ultimately relieved of its financial embarrassment, a that such arrangement was entered into in good faith, and witho any fraudulent intent;

Whereas, the Master should have found that said Janua arrangement was not the result of any such feeling, belief or e pectation, and was not entered into in good faith and without fra ulent intent.

And whereas, also the Master should have found that the Rub Companies and their agents had no confidence, either in the fina cial condition of the Fargo Company, or in the honesty and perso integrity of the Fargos themselves, and therefore, secured cont of the corporation by controlling its Board of Directors and Offic compelled the Fargo Company to set apart one of its floors as t store-room of the Rubber Companies, wherein to keep their co signed goods; to deposit the proceeds arising from the sale of co signed goods, in a separate bank account; to keep separate boo and records of all transactions between the Rubber Companies a the Fargo Company, and employed every possible agency to prot themselves, as a cautious man would have done had he b
641 lieved the Fargo Compeny hopelessly insolvent and t Fargos themselves, personally dishonest.

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16. For that the Master finds that $13,470.00 were paid to the ...ber Companies after January 6, 1896, on account of the alleged ...ebtedness of $50,000.00, and that during the same time ...,000.00 was paid the United States Rubber Company on account the indebtedness to that Company existing January 6, 1896, and ...t the United States Rubber Company consigned goods after ...uary 6, 1896, to the Fargo Company, to the amount of $24,-...4.04.

Whereas, the Master should have found that several thousand ...llars more than $13,470.00 were paid on account of said ...,000.00, and that several thousand dollars more than $15,000.00 ...re paid to the United States Rubber Company on the indebted-...ss to that Company existing January 6, 1896, and that only ...out $18,000.00 worth of goods had been consigned by the United ...tes Rubber Company to the Fargo Company during the same ...riod.

17. For that the Master finds that the sum of $142,424.81 was ...e to the United States Rubber Company, and $36,530.00 to the ...ndee Company on August 6, 1896.

Whereas, the Master should have found that on August 6, 1896, ...ere were several thousand dollars less that $142,424.81 due to ...e United States Rubber Company, and several thousand dollars ...s than $36,530.00 due to the Candee Company, and the Master ...ould have found that more than $4,000.00 of the claims of the ...ited States Rubber Company and of the Candee Company consist ...interest, to which interest said Rubber Companies are not en-...led.

18. For that the Master finds that the testimony does not show that the parties were influenced in making the January ...rangement, by belief of the insolvency of the Fargo Company at ...t time, and that the conduct of the corporation afterward and ...til about the time of the entering up of the judgment notes, ...early indicated the hope and expectation that the Fargo Company ...ould be finally relieved of its troubles;

Whereas the Master should have found that the parties were not ...fluenced by any such belief, and that the conduct of the Corpor-...ion did not indicate any such hope or expectation, but that on the ...ontrary, the parties were influenced in making the January ...rangement, by a firm conviction that the Fargo Company at that ...me was insolvent, and that its continuance in business could only

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be temporary, and that the January arrangement was the only possible means by which the Rubber Companies could avoid the almost certain loss of a large proportion of their claims against the Fargo Company, including the consigned goods then on hand, in all amounting to over $300,000.00.

19. For that the Master finds that nothing occurred between January 6 and August 6, 1896, inconsistent with the theory that the business of the corporation was carried on with an evident purpose and expectation of continuing same;

Whereas the Master should have found that the course of dealing after January 6, 1896, demonstrated that the Rubber Companies were substantially convinced during all that period, that the financial condition of the Fargo Company was practically hopeless, and that its final collapse could only be temporarily delayed.

20. For that the Master finds that during the period from 642½ January 6 to August 6, 1896, the general creditors of the Fargo Company were substantially the same as before;

Whereas the Master should have found that during that period a large number of persons, firms and corporations were induced to sell goods to the Fargo Company on credit, and to become creditors to the Fargo Company who had not been its creditors prior to January 6, 1896.

21. For that the Master finds that said Charles E. Fargo applied to the Metropolitan Bank for a loan of $10,000.00 on August 3, 1896;

Whereas the Master should have found that the application for said loan was made late in the afternoon of the 4th day of August or on the morning of the 5th day of August, 1896.

22. For that the Master finds that on or about August 3, 1896 Charles E. Fargo stated to the President of the Metropolitan Bank that the Fargo Company would be obliged to fail unless it received some assistance;

Whereas the Master should have found that Charles E. Fargo did not apply to, or suggest that said Bank should furnish the Fargo Company any assistance, but on the contrary it is clearly shown by the evidence that Charles E. Fargo called upon the President of the Metropolitan Bank, on or about August 4, 1896, for the purpose of borrowing $10,000.00 for the benefit of himself and his bro

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, and for their private use, and that at this interview he ex-ained to said President that the Fargo Company was about to fail, d that all the transactions had by Charles E. Fargo with said nk in relation to said proposed loan of $10,000.00 were had in ntemplation of the immediate failure of the Fargo Com-ny.

3 23. For that the Master finds thatat the time of the interview, between C. E. Fargo and the President of the Metropolitan Banks E. Fargo represented to the President of said Bank that the rgo Company was indebted to him and his brothers for money, ceeding $10,000.00, which they had borrowed upon their notes r the benefit of the Company, and which they had paid over to e Company for use in its business, and that said Fargo Brothers d put up some bank stock that they owned, as collateral to said tes; and C. E. Fargo thereupon proposed to said Bank that if it ould loan said C. H. Fargo & Company $10,000.00 in addition to then existing loan, so that said Company could reimburse him d his brothers and enable them to take up said notes, he would ecure from the said Fargo Company judgment notes for said nk, both for said sum so advanced as aforesaid, and also for notes en remaining due said Bank to the amount of $40,000.00.

Whereas said Master should have found that C. E. Fargo told the resident of said Bank that his Company was about to fail, that the ubber Companies held judgment notes for the amount of their ims; that he and his brothers, in view of the failure of the mpany, had to have some money for the use of himself and his others, and that he wished to have an additional loan of $10,000.00 ade on the Company's paper for that purpose, stating that he ought the Company owed it to him and his brothers, and that if e Bank would advance this money to be used for this purpose, he ould obtain for the Bank the same preferential security for the en-re claim, including $10,000.00, as the two Rubber Companies had ready obtained and were about to enforce; that the President of the Bank acceded to this request, and agreed to loan $10,000.00 4 with knowledge of the purpose for which it was intended to be used by the Fargos, and that the money so obtained, was ereupon divided between Charles E. Fargo and his two brothers, d used by them solely for their own benefit.

24. For that the Master finds that the Metropolitan National nk did not know of the change in the Board of Directors or of e by-laws of Fargo Company at the time it completed the ar-

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rangement for the loan of the $10,000.00, and the procuring
security for its claim against the Fargo Company;

Whereas the Master should have found that the Metropolit
Bank first obtained the two judgment notes for $25,000.00 each, a
the agreement by which it was to share and pro rate with the Ru
ber Companies in the securities they held, before it paid the $1
000.00 over to Charles E. Fargo, and that said $10,000.00 were
paid, with full knowledge on the part of the Bank concerning t
January arrangement made with the Rubber Companies, and w
not in fact, paid over to the Fargos until all the arrangements h
on August 4, 5 and 6, as shown by the resolutions of the Far
Company and the acts of its officers, had been consummated.

25. For that the Master finds that the Metropolitan Natio
Bank is not shown to have been guilty of any actual fraud
against complainant and the other creditors of the Fargo Compa
by reason of any of its transactions with the Fargo Company or t
Rubber Companies;

Whereas the Master should have found that said Bank was gu
of actual fraud in connection with said transactions, and took
security for the purpose of hindering, delaying and defrauding
other creditors, and with knowledge of the intent with wh
645 the securities had been given to the Rubber Companies, a
that the Fargos would appropriate the $10,000 loaned to the
to their own sole use and benefit, and place the same beyond t
reach of the creditors of the Fargo Company.

28. For that the Master fails to find that on or about Janua
2, 1896, the assets of the Fargo Company amounted substantial
to $145,000.00, and so remained to August 6th, 1896;

Whereas the Master should have so found.

29. For that the Master fails to find that on January 2nd, 18
and for sometime prior thereto, the Fargo Company was, and ev
since has remained wholly unable to pay its debts and obligatio
in the usual course of business, or otherwise;

Whereas the Master should have so found.

30. For that the Master fails to find that owing to the dealin
of the Fargo Company and said Rubber Companies in connecti
with the rubber goods so on hand and in the possession of the Far
Company on January 2nd and 6th, 1896, said rubber goods were

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tween the Fargo Company and its creditors, in fact, the property the Fargo Company;

Whereas the Master should have so found.

31. For that the Master fails to find that in the conduct of its siness between January 6 and August 6, 1896, the Fargo Company carried on a large correspondence by mail with said Rubber mpanies, and also with persons, firms and corporations from whom had purchased, and was purchasing goods and merchandise, and t in this correspondence, said Charles E. Fargo, F. M. Fargo and A. Fargo, and the employes of the Fargo Company, wrote and mailed in the usual course of business, a large number of letters to said Rubber Companies and to persons, firms and corporations from whom the Fargo Company was purchasing goods, and to om it is now indebted, and who have filed their claims herein; that d letters were written on letter paper, bearing a printed letter-head ting that F. M. Fargo was Treasurer, and Edward A. Fargo, cretary of the Fargo Company, when in fact, during all that time, ell McKeever, the representative of the Rubber Companies, was ch Secretary and Treasurer.

Whereas the Master should have so found.

32. For that the Master fails to find that said letter heads and e use thereof in such corespondence, constituted positive representations of material matters of fact by the Fargo Company and agents, viz: representations that F. M. Fargo still continued to Treasurer, and Edward A. Fargo still continued to be Secretary the Fargo Company, and the said representations were, and ch of them was false, and known to the Fargo Company, Charles Fargo, F. M. Fargo and E. A. Fargo, and said Rubber Comnies, to be false, and tended to mislead and deceive, and did misd and deceive the present creditors of the Fargo Company, and at by means thereof, said creditors were induced to believe, and d believe that Frank M. Fargo was such Treasurer, and said E. Fargo was such Secretary respectively, and that the Fargo Comny was managed and controlled by the three Fargos, and by no e else, as it had been managed and controlled for several years ior thereto;

Whereas the Master should have so found.

33. For that the Master fails to find that by reason of the secrecy by which said January arrangement was kept from the knowl-

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edge of the public and the Fargo Company's creditors, a
646½ by reason of the fact that the business of the Fargo Compa
was ostensibly carried on as above set forth by the Farg
the Fargo Company, between January 6th, 1896, and August 6
1896, was enabled to, and did in fact preserve its credit, and w
enabled to, and did in fact purchase and obtain large quantities
merchandise and material on credit, and borrowed large sums
money from a large number of persons, firms and corporation
(among others the merchandise and material so purchased was fr
the complainant), and has never paid for the greater part there
which part so remaining wholly unpaid amounts to the sum of o
$172,000.00, and the Fargo Company still owes for the same to su
firms, persons and corporations;

Whereas the Master should have so found.

34. For that the Master fails to find that the persons, firms a
corporations from whom the Fargo Company purchased goods
credit and borrowed money between January 6th, 1896, and A
gust 6th, 1896, as set forth in the preceding exceptions, would n
nor would any of them, have sold the Fargo Company any goo
or loaned them any money after January 6th, 1896, had they kno
of said January arrangement, or had they known that five of t
directors and the secretary and treasurer of the Fargo Compa
were the agents of, and controlled by said Rubber Companies;

Whereas the Master should have so found.

35. For that the Master fails to find that as a matter of fa
said persons, firms and corporations from whom the Fargo Co
pany so purchased goods on credit and borrowed money after Ja
uary 6, 1896, supposed and believed at the time they sold said goo
and loaned such moneys, that the Fargo Company and the direct
thereof continued to be managed and controlled by Charles E
Fargo, F. M. Fargo and Edward A. Fargo, as the owners of a
or substantially all of the capital stock of said Compan
647 and to control said corporation, as they had for many yea
prior thereto, owned and controlled the same, and that sa
belief was produced and caused by the secrecy by which said Ja
uary arrangement was preserved, and by the fact that the Farg
continued after January 6th, 1896, ostensibly, and were held o
to the world and to its creditors, as the sole officers and manage
of the Fargo Company;

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Whereas the Master should have so found.

36. For that the Master fails to find that the fact that the Fargo ompany was making the purchases on credit from and after Janu- 6th, 1896, as above set forth, was during all the period after nuary 6th, 1896, known to, and its action in making the same, proved by said Rubber Companies;

Whereas the Master should have so found.

37. For that the Master fails to find that after January 6, 1896, Fargo Company paid off its indebtedness to the Candee Com- ny existing on January 2nd, 1896, very rapidly, so that on or be- e May 10, 1896, the Fargo Company had paid said Candee Com- ny about $44,900.00;

Whereas the aster should have so found.

38. For that the master fails to find that from and after Janu- 6, 1896, Candee Company did not sell or consign to the Fargo mpany any property whatever, and that the said United States bber Company did not sell any property to the Fargo Company cept a small amount of tennis goods, not exceeding $600.00, and signed to the Fargos only a small amount of merchandise, not ceeding $18,000.00, and that after January 6, 1896, said Candee Company and said United States Rubber Company did not give to the Fargo Company any new credit whatever, except for the said tennis goods;

Whereas the Master should have so found.

39. For that the Master fails to find that the total payments and mittances in money made by the Fargo Company to said Rubber mpanies after January 6, 1896, were as follows: To the United tes Rubber Company about $25,000.00; to said Candee Company out $60,000.00; a total of about $85,000.00;

Whereas the Master should have so found.

40. For that the Master fails to find that a note of the Fargo mpany payable to the Metropolitan National Bank of Chicago d mature on August 2nd, 1896, and that about the last of July, 96 Charles E. Fargo considered the condition of the Fargo Com- ny so critical that he was not willing to ask said Bank to renew id note without disclosing to the Bank the January arrangement, nd at the same time protecting the Bank in the same manner in

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which the Fargo Company had protected the Rubber Companies on the ground, as he states in his testimony, that otherwise obtaining such renewal would be a fraud upon said Bank;

Whereas the Master should have so found.

41. For that the Master fails to find the substantial facts as that some time between August 3rd and August 6th, 1896, the Fargos became convinced that the Fargo Company must immediately suspend business and fail, and that Gilbert E. Porter, one of the counsel for the Rubber Companies during that time, became advised of this fact, and became convinced that the January arrangement must be immediately set in operation, and it was so carried out, and the Bank permitted to participate in, and made a party thereto;

649 Whereas the Master should have so found.

42. For that the Master fails to find that as a result of the negotiations between Charles E. Fargo and the Metropolitan National Bank and the Chicago Counsel for the Rubber Companies between August 4 and August 6, it was definitely agreed that the Bank should nominally loan to the Fargo Company $10,000.00 which should be immediately turned over to Charles E. Fargo, F. M. Fargo and Edward A. Fargo, to be used for their own personal benefit; and that in consideration of this loan, the directors of the Fargo Company should pass a resolution authorizing the issurance of two judgment notes, payable to said Bank, each for the sum of $25,000.00, and also authorizing the sale to said Bank of the real estate and factory of the Fargo Company at Dixon, Illinois, at an agreed price of $25,000.00, and that such real estate transfer should be accepted by the Bank in full payment and satisfaction of one of said $25,000.00 judgment notes, and said note should thereupon be cancelled, and that judgment should be immediately entered upon the judgment notes held by said Rubber Companies, and that likewise judgment should be entered on the remaining $25,000.00 judgment note to be given to the Bank, and that all the foregoing matters were in fact done;

Whereas the Master should have so found.

43. For that the Master fails to find that it was a part of the arrangement between the Rubber Companies, the Bank and the Fargo Company and its officers, that judgment should be immed

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ntered in favor of the Rubber Companies and the Bank, and
ions issued thereon, and levied upon all the property of the
argo Company, and the same should be sold under said execu-
ons, which judgments were in fact entered and executions issued
ereon and levied on all said property on August 6, 1896, and
s a part of said arrangement, all the book accounts and choses
on of the Fargo Company should immediately be assigned to
nited States Rubber Company for the benefit of the two Rub-
mpanies and said Bank, and that in fact, the same was done,
ier the 5th or 6th days of August, 1896, and that, in fact, all
operty, tangible and intangible, of every kind and nature, be-
g to the Fargo Company, or in which it was interested, was
over to the two Rubber Companies and the Bank, on the
6th days of August, 1896, and placed beyond the reach of
er creditors;

ereas the Master should have so found.

For that the Master fails to find that said Rubber Com-
and the Metropolitan National Bank agreed to pro rate in
tion to their respective claims in all the assets of the Fargo
any, and that as a basis for such pro-rata distribution, the
of said Metropolitan Bank should be treated and considered
unting to $50,000.00, consisting of the $40,000.00 of old in-
ness, and said additional sum of $10,000 00;

ereas the Master should have so found.

For that the Master fails to find that the deed of convey-
f the factory plant at Dixon, made by the Fargo Company to
nk, was accepted by the Bank in full payment of the sum of
0.00, part and parcel of the indebtedness of said Fargo Com-
o the Bank, and that by the execution, delivery and accept-
f said deed, the indebtedness of said Fargo Company to said
was reduced by at least said $25,000.00;

ereas the Master should have so found.

46. For that the Master fails to find that on or about August
, 1896, there remained on hand in the possession and control
Fargo Company in its place of business in Chicago, Illinois,
e amount of rubber boots and shoes and other rubber goods,
value of at least $100,000.00, which had been theretofore
d to the Fargo Company by the United States Rubber Com-
and that after the levies had been made under the executions

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in favor of said Rubber Companies, as set forth in the bill of c
plaint, said United States Rubber Company seized and took a
said rubber goods out of the said place of business and removed
same from the State of Illinois, and appropriated the same t
own use, and that such appropriation constitutes an illegal pre
ence and is void, and said Company should account for the sam
the present creditors of the Fargo Company;

Whereas the Master should have so found.

47. For that the Master fails to find that by reason of the c
trol which said Rubber Companies exerted over the Fargo C
pany by means of said January arrangement, said Rubber Compan
from and after January 9, 1896, constituted substantially the Fa
Company, and that the goods, wares and merchandise so purcha
by the Fargo Company from and after January 9, 1896, were
subtance and in fact, purchased by said Rubber Companies;

Whereas the Master should have so found.

48. For that the Master fails to find that the arrangements
tered into and transactions had and done by and between the Ba
Charles E. Fargo, the Fargo Company and the Rubber Compani
on or about August 5, 1896, in relation to the $10,000.00 turn
over by the Bank to the Fargos for their own use, and the taking
the Bank into the scheme of security created by the Janua
652 arrangement and the agreements between the Bank aad the Ru
ber Companies to share in the proceeds of the assets of t
Fargo Company in proportion to their respective claims, and fixi
the Bank's claim at $50,000.00, constituted an actual fraud up
the general creditors of the Fargo Company;

Whereas the Master should have so found.

49. For that the Master fails to find that the formation of t
January arrangement, in itself, and the operations of the Far
Company and the Rubber Companies thereunder, were an actu
fraud on the persons, firms and corporations which sold merchandi
or loaned money to the Fargo Company from and after January
1896, and whose claims, or any part thereof, for such merchandi
and loans, have not been paid, irrespective of the transactions an
arrangements entered into and done by and between the Rubbe
Companies, Charles E. Fargo, the Fargo Company and the Metr
politan Bank in August, 1896;

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Whereas the Master should have so found.

50. For that the Master fails to find that the January arrangement was incompatible with fair business dealing and with good morals; that they who evolved the scheme, showed their appreciation of its true character, when they avowed that without disclossing the situation, it would be bad faith to ask further loans of the Metropolitan National Bank. It was no better to permit credit to be obtained by others who were kept in ignorance, when, if they had known the facts, they certainly would not have given credit;

Whereas the Master should have so found.

51. For that the Master fails to find that the Metropolitan National Bank joined in consummating, and took advantage of the fraudulent January arrangement, with full knowledge of its character. By advancing the additional sum of $10,000.00, with the understanding that it was to be used for the personal benefit of the Fargos, the Bank increased to that extent, the fraud practiced upon the creditors and thereby enhanced the resulting injury to the other unsecured creditors;

Whereas the Master should have so found.

52. For that the Master fails to find that the Rubber Companies first refused to make any loan or advance to the Fargo Company, and demanded that the Fargo Company should prefer the Rubber Companies to the exclusion of all other creditors, which the Fargo Company refused to do, and stated that if the Rubber Companies refused to advance the $50,000.00, the Fargo Company would make an assignment and treat all its creditors on an equality, and that thereupon the Rubber Companies, in order to prevent the Fargo Company from doing this, consented to make the $50,000.00 advance, on condition that the January arrangement would be carried out;

Whereas the Master should have so found.

53. For that the Master fails to find that the representatives of the Rubber Companies remained in Chicago in January for nearly a week; had repeated interviews with the officers of the Fargo Company, but made, or caused to be made, no examination whatever of the books or assets of the Fargo Company, although they had reasonable time to make a reasonable examination of the same;

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Whereas the Master should have so found.

54. For that the Master fails to find that during the Auditorial interviews between January 2 and January 6, 1896, the giving chattel mortgages to the Rubber Companies was first suggested, was rejected on account of its publicity, and because such chattel mortgages would destroy the future credit of the Fargo Company;

Whereas the Master should have so found.

55. For that the Master fails to find that under the January arrangement the matter of entering judgments upon the judgment notes given to the Rubber Companies, and the matter of thereafter controlling the Fargo Company in the interests of the Rubber Companies, was left by agreement of all the parties, to the absolute discretion of Charles L. Johnson, and the Rubber Companies' Counsel in Chicago;

Whereas the Master should have so found.

654 56. For that the Master fails to find that on January 2, 1896, the Rubber Companies had possession of the judgment notes given the preceding day, and threatened to cause judgment to be entered upon said judgment notes immediately, unless the January arrangement was agreed to and carried out in a manner satisfactory to the Rubber Companies' counsel in Chicago, and that under said threat, and in fear of having said judgments immediately entered, the Fargo Company yielded to the Rubber Companies' demands, and the January arrangement was then consummated;

Whereas the Master should have so found.

57. For that the Master fails to find that neither McKee, Madison, Fuller, Tiffany or Blake knew why they were elected directors of the Fargo Company, except that they understood from the Rubber Companies' Counsel that they were merely nominal directors, and were to act solely in the interests of the Rubber Companies, under the instruc ions of their Chicago Counsel; and which they in fact did;

Whereas the Master should have so found.

58. For that the Master fails to find that the directors selected by the Rubber Companies, took no interest in the Fargo Company affairs; never went to its premises; made no inquiries as to its affairs or condition; performed no acts except those shown in the

f the Fargo Company, and intentionally abstained from any information concerning the Fargo Company's financial ;

eas the Master should have so found.

For that the Master fails to find that it was the intention of ies to the January arrangement, that by said arrangement, absolute control of the corporate action, business and irs of the Fargo Company should be vested, to all intents purposes, in the Rubber Companies, and that said Rubber y directors, and McKeever as the Secretary and Treasurer, e mere agents of the Rubber Comanies, and that the Rubber ies had, between January 6 and August 6, 1896, control of orate powers, franchises and acts of the Fargo Company ;

reas the Master should have so found.

For that the Master fails to find that on January 2, 1896, and ter continuously, Charles E. Fargo and his brothers knew e Fargo Company was hopelessly insolvent and bankrupt, ld not continue for more than a short time, even with the 0.00 advanced by the Rubber Companies ;

reas the Master should have so found.

For that the Master fails to find that from and after January 6, the Rubber Companies, if they did not then know, could have ascertained the true facts as to the financial condition of rgo Company, and it was their duty so to do, and that their , or refusal so to do, under the circumstances shown by the ce, constitutes negligence so gross as to amount to actual upon the subsequent creditors of the Fargo Company ;

ereas the Master should have so found.

For that the Master fails to find that as a part of the Janu- rrangement, it was agreed between the Rubber Companies and Fargo Company that until the Rubber Companies should see fit eir discretion, to cause judgments to be entered and wind up fairs, the Fargo Company should continue to carry on its ess, ostensibly as before, and ostensibly managed and controlled by the Fargos as before that time, and that the Fargo Com- pany should continue to buy merchandise on credit from parties ignorant of said January arranegment ;

Exceptions of American Oak Leather Co. et al. to master's report, filed April 20, 1899.

Whereas the Master should have so found.

Wherefore, the said parties to this cause do except to said and appeal therefrom to the judgment of this Court.

(signed) NEWMAN, NORTHRUP & LEVINSON
Solicitors for said American Oak Leather Co
and said Intervening Creditors.

(Endorsed) Filed April 20, 1899.

S. W. BURNHAM

657 And, on the same day, to-wit, the 20th day of April, there was filed in the office of the Clerk of said Court E tions to the Report of Henry W. Bishop, Master in Chancery, following words and figures, to-wit:—

United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATE

Northern District of Illinois,

Northern Division.

American Oak Leather Company
vs. } No. 24,238.
C. H. Fargo & Co. et al.

EXCEPTIONS

To the report of Henry W. Bishop, Master in Chancery, filed in said cause on the 17th day of April, A. D. 1899.

Now come the American Oak Leather Company, complainan Pfister & Vogel Leather Company, the Eagle Tanning Work Wilder & Company jointly and severally except to said report, an each and every finding therein, and for grounds of exception sho the following:

Exceptions of American Oak Leather Co. et al. to master's report, filed April 20, 1899.

First. That the Master erroneously finds that the inquiry in this ...e is limited to the period commencing on the 6th day of January, ...96, and ending on the 6th day of August of the same year, ...reas the inquiry properly includes transactions commencing in ...3, and many of the facts and transactions against which relief is ... asked took place or had their inception on or about January ...s 2, 1896, as shown by the evidence taken before the Master.

Second. Because the Master should have found that at the ...me that Fargo applied to Johnson on January 2, 1896, for assist...ce on behalf of the Fargo Company, he informed Johnson that ...e corporation could not pay its debts as they matured in the regular ...rse of business, and that unless it received the assitance which he ...quested, it would be obliged to fail in business at that time be...se of its inability to pay its debts; that upon receiving this infor...tion, Mr. Johnson endeavored to induce Fargo to give to the ...bber Companies security for all their claims, which Fargo re...sed to do, stating that if the assistance was not given as he re...sted so that his company was compelled to fail then he would ...ve no preferences to the Rubber Companies, but would treat all ...editors alike.

Third. Because the Master in purporting to state the arrange...nt made between the Fargos and the Rubber Companies, with ...ference to the action of the new directors who were nominated by ...e counsel for the Rubber Companies, omits to state that it was ...ecifically agreed and was an essential part of the plan that these ...w directors were expected to act as might be necessary to guard ...d protect the interests of Johnson and of the two Rubber Com...nies under the agreement made between them and in pursuance of ...e plan for securing the claims of the Rubber Companies and for ...venting other creditors from obtaining any security which might ...any wise injure or affect the security proposed to be given to the Rubber Companies.

Fourth. Because said Master has found that the change of the Board of Directors and the officers and the changes of the by...ws of the Fargo Company and the resolution authorizing the judg...ent notes and assignment of accounts were all for the purpose of ...iving preferential security to the Rubber Companies, and that the ...atter was kept secret in order to allow the Fargo Company an op...rtunity of getting through embarrassments apparently tempo...ry, but not with a fraudulent intent as to the other creditors of ...e Company, and that the only purpose of changing the Board of ...irectors and amending the by-laws was to protect the Rubber

Exceptions of American Oak Leather Co. et al. to master's report, filed April 20, 1899.

Companies against the giving by the Fargo Company of preferen securities or judgment notes to other creditors which should be s perior to the security of the Rubber Companies, whereas the Ma ter should have found that the change in the Personnel of t Board of Directors and in the by laws of the company was ma for the purpose of withdrawing from the officers of the compa all power of giving to any other creditor security for his debt a for the purpose of preventing other creditors from collecting th claims until the claims of the Rubber Companies were paid in f and that an essential part of the plan on the part of both parti was that it should be kept secret because they all knew that Far & Company could not thereafter obtain goods on credit from an one who had knowledge or suspicion of the arrangement and th this secrecy was maintained for the purpose of enabling Fargo Co. to obtain goods on credit from persons with whom they we then about to deal.

660 Fifth. Because the Master has found that the arrangem as made between the Rubber Companies and the Fargo Co pany was carried out in good faith by the parties, whereas, he sho have found that the arrangement was not in good faith but was furtherance of a plan to hinder, delay and defraud other cr itors.

Sixth. Because the Master finds that the Rubber Compani were in ignorance of the fact that on January 6, 1896, the assets the company were insufficient to discharge its indebtedness, where he should have found both from the testimony of Johnson, Sadle Beale and the other witnesses in the case that that was the first fa which was called to the attention of the Rubber Companies and w placed before them as the reason why it was necessary that som thing should be done in order to prevent the Fargo Company fro failing at that particular time.

Seventh. Because the Master finds that the indebtedness i curred by Fargo & Co. for goods purchased after January 6, 189 which remained unpaid on August 6, 1896, was only $142,690.9 whereas he should have found that the amount of said liabi ties remaining unpaid on August 6, 1896, was upwards $193,000.00.

Eighth. Because the Master finds that between January 6th an August 6th 1896, the Fargo Company reduced its general indebte ness to a considerable extent, whereas there is no evidence befo him justifying that finding.

Exceptions of American Oak Leather Co. et al. to master's report, filed April 24, 1899.

Ninth. Because the Master states that Johnson made no detailed examination of the assets of the company, whereas the idence shows that Johnson made no examination whatever of the ets and the reason given by Johnson in his testimony was that he d not have time enough to make such examination and the evi- nce shows that he and Sadler, two thoroughly competent and well- ined business men, remained in the City of Chicago one entire ek, discussing the situation with the Fargos, during which neither hnson nor Sadler, nor anyone on their behalf, even visited the ce of business of the Fargo Company and made no examination any kind as to the assets.

Tenth. Because the Master finds that the advance of $50,000 on nuary 6, 1896, and the giving of the judgment notes and security erred to was the result of an evident feeling upon the part of all parties to the transaction and was in the belief and expectation their part that through the assistance which was in this way ded the Fargo Company, it would be enabled to continue its siness successfully and become ultimately relieved of its financial barrassments and that such arrangement was entered into in good th and without any fraudulent intent, is not sustained by the evi- nce, the evidence showing on the contrary that the whole arrange- ent of January 6, 1896, was entered into for the purpose of afford- g such security to the Rubber Companies which involved the hin- ring and delaying of the other creditors of the company and ren- ring it impossible for other creditors of the company to obtain any urity whatever for the indebtedness due then in case they applied for the same or sought such security and for the purpose of in- ducing persons to sell goods upon credit to the company in ignorance of the true situation and by concealing such situa- n from them and with the express understanding that the then turing notes of L. Candee & Co., aggregating $44,900.00 should paid as they matured absolutely and unconditionally, and which es matured in January and the following February and March.

Eleventh. Because the scheme and arrangement agreed upon in nuary, 1896, was a secret arrangement and kept secret from the her creditors of the Fargo Company, thus preventing such other editors from obtaining, and denying to the Fargo Company the wer of giving a like advantage to such other creditors as that hich the Rubber Companies were obtaining.

Twelfth. Because the Master has found that the testimony does ot show that the parties were influenced in making the January rangement, upon a belief of the insolvency of the Fargo Com-

Exceptions of American Oak Leather Co. et al to master's report, filed April 20, 1898.

pany at that time and the conduct of the corporation afterwards u
until about the time of the entering up of the judgment note,
the Master's judgment, clearly indicating a hope and expectat
that the Fargo Company would be finally relieved of its trou
whereas the testimony shows that the Master should have fo
that the conduct of Johnson and the Rubber Companies in mak
the January arrangement was precisely what would have been d
by them if they had known of the bankrupt condition of the Fa
Company at that time, and the testimony shows that Johnson
know of the insolvent condition of the Fargo Company at th
time and therefore insisted upon the January arrangement as
ried out, and this knowledge furnished both the reason for the ma
ing of the arrangement and the method by which it was carried
and included in the arrangement the probable contingency
663 the final failure of the company by providing for the assi
ment of all its accounts, that Johnson did believe that
Fargo Company was insolvent, is further evidenced by the new
additional precautions taken to protect the interests of the Rub
Companies in the consigned goods and the proceeds.

Thirteenth. Because the Master should have found that t
whole course of the parties in making the arrangement of Janua
1896, and in the execution thereof is contrary to and inconsist
with the finding that Johnson regarded the Fargo Company
solvent, and is contrary to and inconsistent with the good faith a
want of fraudulent intent on the part of the Rubber Companies
Fargo.

Fourteenth. Because the Master finds that the general credit
of the company from whom goods were purchased between Janua
and August, 1896, were substantially the same as prior to th
period, whereas such finding is not justified by the evidence, a
the evidence shows that the goods were purchased from a lar
number of new creditors aside from those mentioned in this repo

Fifteenth. Because the Master erroneously finds that Char
E. Fargo applied to the Metropolitan National Bank for the loa
$10,000 on August 3, 1896, whereas he should have found that t
application for the loan was made late on the afternoon of the 4
of August or on the morning of the 5th of August, 1896, after t
Fargo Co. had decided to no longer continue business.

Sixteenth. Because the Master erroneously states in his repo
that on or about August 3rd, 1896, Charles E. Fargo stated to t
President of the Metropolitan National Bank that his compa

Exceptions of American Oak Leather Co. et al. to master's report, filed April 20, 1899.

...ld be obliged to fail unless it received some assistance, whereas ...fact is as shown by the evidence that Charles E. Fargo called ...the President of the Metropolitan National Bank for the pur... of borrowing $10,000 for the benefit of himself and his ...ers and for their private uses, according to the testimony, and ...Master should have found that at this interview Fargo explained ...to Mr. Keith that his company was about to fail and his transac...tions with him with reference to the loan of $10,000 were in ...contemplation of its immediate failure.

...enteenth. Because the Master states that at the time of said in...ew the said C. E. Fargo represented to the president of said ...that the said C. H. Fargo & Co. was indebted to him and his ...ers for money exceeding $10,000 which they had borrowed ...their notes for the benefit of the company and which they had ...over to the company for use in its business and that said Fargo ...ers had put up some bank stock that they owned as ...teral to said notes; and C. E. Fargo thereupon pro... ...d to said bank that if it would loan said C. H. Fargo & ...$10,000 in addition to its then existing loan, so that ...company could reimburse him and his brothers and enable ... to take up said notes, he would procure from the said C. H. ...o & Co. judgment notes for said bank, both for said sum so ...ced as aforesaid, and also for notes then remaining due said ... to the amount of $40,000, whereas the Master should have ...d that Mr. Fargo told Mr. Keith that his company was about ...il, that the Rubber companies held judgment notes for the ...nt of their claims and had held them since January, that he and ...is brothers in view of the failure of the company had to have ...some money for the private benefit of himself and his brothers, ...and that he wished to have an additional loan of $10,000 made ...e Company's paper for that purpose, stating that he thought ...ompany owed it to him and his brothers, and that if the Bank ...d advance this money to be used for this purpose, Fargo would ...a for the Bank the same preferential security for the entire ..., including $10,000 as the two Rubber Companies had already ...ed and were about to enforce, that the President of the Bank ...ed to this request and loaned $10,000 with knowledge of the ...se for which it was intended to be used and that the money so ...ed was thereupon divided between Charles E. Fargo and his ...o brothers.

...hteenth. Because the Master erroneously finds that the ...politan National Bank did not know of the change in the ...of Directors or of the by-laws of Fargo & Company at the

Exceptions of American Oak Leather Co. et al. to master's report, filed April 20, 1899.

time it completed the arrangement for the loan of the $10,000 ... the procuring of security for its claim against Fargo & Compa... whereas he should have found that the Bank loaned said money ... completed the transaction of obtaining security with full knowled... of those facts, and for the purpose of getting the same preferen... before then given to the Rubber Companies.

Nineteenth. Because the Master has found and stated that t... Metropolitan National Bank is not shown to have been guilty ... any actual fraud as against complainant and the other creditors ... the Fargo Company by reason of any of its transactions with Far... & Co. or the Rubber Companies, whereas he should have fou... that said Bank was guilty of actual fraud in connection with s... transactions, and took its security for the purpose of hindering, ... laying and defrauding the other creditors and with knowled...
666 of the intent with which the securities had been given to t... Rubber Companies.

667 Twentieth. Because the Master has failed to find, as ... should have done, that on January 2, 1896, when the nego... tions between Fargo and Co. and the Rubber Companies for se... ity began, the former was insolvent, and would be compelled to ... at that time, unless some plan were devised to assist it, and t... these facts were known to both Charles E. Fargo and to the offi... and advisers of the Rubber Companies, who took part in the ne... tiations; that the Rubber Companies had then no security for th... claims, and were informed that unless they assisted Fargo, n... security would be given them, but that all creditors would ... treated alike; that all parties then knew that the continuance ... Fargo & Co. in business necessitated its procuring large amou... of goods upon credit, from persons who would not give such cre... if it were known that Fargo & Co. was embarrassed, or that it ha... given to the Rubber Companies judgment notes or other forms ... preferential security, or had made arrangements for such prefer... tial security in the event of its failure, or had transferred the co... trol of its board of directors to the Rubber Companies; that f... these reasons, all of said parties knew that one of the most ess... tial things in connection with the making of an arrangement w... Fargo & Co. for the preference of the Rubber Companies in ... of failure, was that the arrangement should be kept absolute... secret, so that no one to whom Fargo & Co. should apply for cre... would know of the fact, and therefore refuse credit; that in co... nection with the plan of changing the board of directors, the pe... sons representing the Rubber Companies considered that the fa... that the men who were to be the new directors were the repr...

Exceptions of American Oak Leather Co. et al. to master's report, filed April 20, 1899.

ives of the Rubber Companies, would make the securi- hich the plan contemplated fraudulent as to creditors, ecause they thought that it would be a fraudif the new assed the necessary resolutions, they had them passed by rd before the change was made: but that all of this was art of one plan, which was arranged in its entirety be- ing was done. That all parties intended by the plan of so arrange the matter that the risk of the continuance ness of Fargo & Co. should not be borne by the Rubber , nor shared by them with other creditors, but should be lly by the other creditors, and that if the business was un- so that all creditors could not be paid and a failure oc- loss resulting therefrom should not be borne by the mpanies, but should fall wholly upon the other creditors, hose who, in ignorance of the true situation, had sold otherwise given credit to Fargo & Co. And that one of provided by the parties to accomplish this end, was to so e matter that no other creditor could in any way get se- his claim, either by the action or assistance of the officers & Co., or otherwise.

enty-first. Because the Master should have found that 10,000 which was advanced by the Metropolitan National ugust, 1896, was procured by Fargo in the name of the n, but for the personal use of himself and his brothers, w of the fact that the corporation was unable to pay all rs and was then about to fail, and that its property was ediately seized under executions in favor of the Rubber s and in favor of the Bank, both for its old indebtedness e $10,000 thus added: and that all of these facts were the bank at the time it loaned its money and procured the notes and the deed of the Dixon property, and were so to the representatives of the Rubber Companies, at the took the assignment of the accounts and entered judg- their notes, and at the time they made the agreement with by which both parties agreed to unite their efforts in the ent of their respective claims.

wenty-second: Because said Master did not find and re- to the court the facts established by the testimony that e in the summer of 1895 Fargo and Co. gave to L. Candee notes payable in January, 1896, for $44,900 for goods f them prior to April 1, 1895, and that on the last of De- 1895, Fargo & Co notified L. Candee & Co. that they unable to pay said notes at maturity, and that on January

Exceptions of American Oak Leather Co. et al. to master's report, filed April 20, 1892.

1, 1896,—said Johnson then representing said Candee & Co. and
United States Rubber Co.—came to Chicago, when he was
C. E. Fargo that the Fargo Co. was unable to pay its debts as
matured and that unless he, Johnson, as the representative of
rubber companies, would let them have some money, the com
would fail, and that in response to this appeal said Johnson decl
to render assistance and then urged Charles E. Fargo in vie
their former friendly relations, to give a preference to said U
States Rubber Co. and said L. Candee & Co., and said Farg
fused so to do; and then and there stated to said Johnson that
case of failure Fargo & Co. would treat all creditors alike. T
at said time said Fargo & Co. owed said U. S. Rubber Co. a
$140,000 and had in its possession about $125,000 worth of r
goods which said Rubber Co. claimed were consigned to Farg
Co., and which the counsel for Fargo & Co. claimed could no
held to be consigned goods as against the other creditors of Farg
Co. That thereupon said Johnson, in order to prevent an as
ment by Fargo & Co. without preferences under the l
of Illinois, and in order to get said $125,000 of r
goods set apart and thereafter treated as consigned g
by Fargo & Co., and in order to get the notes
671 Fargo & Co. for $44,900 paid as they matured, which Far
& Co. had given to Candee & Co. in settlement for goods
prior to April 1, 1895, and which notes had been discounted
Candee & Co. and were then outstanding with the endorsement
Candee & Co. thereon, said Johnson during the negotiations, wh
lasted from Jan. 2 to Jan. 6, 1896, finally proposed to said Far
& Co. that if they would execute and deliver to him for L. Can
& Co. their five plain notes for $10,000 each, payable at sh
dates, that he would procure them to be endorsed and discou
by Candee & Co. for the benefit of Fargo & Co., provided th
with the proceeds from the discount of said notes, said Fargo & C
would surely pay as they matured the said notes for $44,900
provided further that said Fargo & Co. would also give to
Candee & Co. a judgment note payable on demand for $45,00
further security for the payment of the said $44,900 notes and
a judgment note for $51,500 payable on demand, to secure
payment of the said five plain notes for $10,000 each, and inc
therein $1,500 for getting them discounted; and provided furth
that said Fargo & Co. would then select from their general st
and set apart, as consigned goods, on the 6th floor of their st
said $125,000 worth of goods about which there was a dispute
tween counsel as to whether or not they were consigned or p
chased goods; and provided further that said U. S. Rubber

Exceptions of American Oak Leather Co. et al. to master's report, filed April 20, 1899

said Candee & Co. should thereafter be fully protected secured and be made preferred creditors to the extent the total present and future liability absolute or con- ent of the Fargo Co. to them; and provided further, that the stockolders of the Fargo Co., namely, Charles E. Fargo, Frank M. Fargo and Edward A. Fargo, would hold a stockholders meeting and elect five out of seven tors of the Fargo Co. as representatives of said U. S. Rubber pany and L. Candee & Co. the said five directors to be selected Wm. G. Beale, the counsel for said Rubber Companies, and pro- l further that all the judgment notes thereinbefore mentioned ld be made and executed before such change is made in said l of directors; and provided further that said three Fargos as stockholders should hold another meeting and ratify and con- such action; and provided further that after the election of said directors the By-Laws of the Fargo Co. should be changed so o officer of the Fargo Company could make or execute any ment notes or mortgage to any other creditor without the l authority of said newly elected board of directors; and pro- further that the giving of said judgment notes, the holding l stockholders meetings, the election of said five directors in terest of said Rubber Companies, should be by the parties secret from the public and from the general creditors of said & Co., and provided further that one of the five directors to ned by said Beale should be Secretary and Treasurer of said Co., and provided further that said Fargo & Co. should ne its business and buy goods on credit as before with sclosing to future creditors any of the transactions here- re named; and provided further that after paying to said & Co. said notes for $44,900, said Fargo & Co. should pay 5,000 to $10,000 per month to said Candee & Co. on the five 0 notes so to be discounted in January, 1896, or on the plain tes for $140,000 so given to U. S. Rubber Co. in January 96, and provided further that as an express condition of ch financial assistance said Fargo & Co. should agree and resolution by its board of directors that whenever thereafter ld be found necessary for the Fargo Co to suspend business l then assign and transfer to said Johnson for said Rubber nies all their book accounts and bills receivable as additional to them. And said Master should have found that there- id Fargo & Co. as a last resort accepted said proposal with very of its conditions and on Jan. 6, 1896, held a directors and passed a resolution authorizing the giving of said notes assigning of said accounts and bills receivable and the

Exceptions of American Oak Leather Co. et al. to master's report, filed April 20, 1899.

Master should have further found that on January 6, 1896, Charles E. Fargo, Frank M. Fargo, and Edward A. Farg owners of all of the stock of said Fargo Co. held a stockho meeting and ratified and confirmed all the acts of said director that on January 9th, 1896, said stockholders held another me at which time Charles E. Fargo, Frank M. Fargo and the fiv rectors designated by said Beale, who were clerks in his o namely George C. Madison, Tiffany Blake, Buell McKeever, F Fuller and Gilbert E. Porter were duly elected and that there on the same day said board of directors elected said Buell McK the secretary and treasurer of said Fargo Company.

(Sig.) SMITH, HELMER, MOULTON & PRICE,
Solicitors for Complain

(Sig.) TENNEY, McCONNELL, COFFEEN & HARDING,
Solicitors for Pfister Vogel Leather Compa

WILLIAM J. MANNING,
Solicitor for Eagle Tanning Works and Wilder & Compa

(Endorsed) Filed Apr. 20, 1899.

S. W. BURNHAM,
C

And on the same day, to-wit: the fourth day of May, 1899, there s filed in the office of the Clerk of said Court, the Opinion of the ıorable Peter S. Grosscup, Circuit Judge, in the following ds and figures to-wit:

UNITED STATES CIRCUIT COURT.

Northern District of Illinois.

Northern District.

merican Oak Leather Company et al. /
vs.
C. H. Fargo & Company et al. \

rosscup, J.,

After as careful an examination of the evidence as I have been le to give to it, I have come to the following conclusions: Opinion filed May 4, 1899.

First. That the intervening creditors have not clearly proven at the Rubber Company and The Candee Company had any inten- n to commit a fraud upon the other creditors at the time of the ıagement of January, 1896; on the contrary, I think the weight proof shows that both these companies believed, that with the ip they were about to give Fargo & Company that company ould be able to weather the storm. I am, therefore, of the con- sion that there was no intentional fraud committed.

Second. The proof on the part of the intervenors has not clearly own that the Ten Thousand Dollars borrowed from the Metro- litan National Bank upon which the Fargos were personally le as indorsers did not go into the business of, and to the benefit the Fargo Company; on the contrary, the proof clearly shows t, so far as the Metropolitan Bank knew, the money had gone to company. Under these circumstances, I see no reason why the tropolitan Bank had not a right to advance the Ten Thousand llars additional money.

Third. The principal difficulty in this case is: How far I should d the Metropolitan Bank to the conveyance to it of the Dixon perty, as payment of one Twenty-five Thousand Dollar note, ving it to share only on the other in the general assets in the ds of the receiver. It was admitted at argument by counsel fo: parties that the Dixon property was not worth more than the s and assessments taken out on it, and that by no management ld it have yielded to either the Metropolitan Bank, or the re-

Opinion filed May 4, 1899.

ceiver, any fund with which to pay the debt of the Bank, or to swell the funds in the hands of the receiver. This seems to have been unknown at the beginning of this suit; for the intervening creditors, instead of leaving the Bank to whatever it might get from the Dixon property on the Twenty-five Thousand Dollar note, or attacking the judgment on the other note, attacked both the judgment and the conveyance, and thereby brought the property, as well as the judgment, into court. The legal effect of this was to throw the Bank back upon its general rights as a creditor, to the extent of Fifty Thousand Dollars. I do not think that the intervening discovery that the Dixon property is worthless justifies me now in changing this programme, and compelling the Bank to take its payment of one-half of its debts. That would be inequitable, unless the Bank had done something to change the attitude of the intervening creditors, and nothing of that character is claimed. The decree in this respect, therefore, will set aside that conveyance, and will admit the Bank as a general creditor to the extent of its entire claim.

Fourth. What punishment should the Court, in view of the character of fraud found against the Rubber Company and the Candee Company, and the Metropolitan Bank, inflict upon them? This is wholly a matter of conscience; the application of justice to the particular matter in hand. It cannot be helped much by what other courts have done under other circumstances.

Candee & Company, The Rubber Company, and the Bank, would undoubtedly, in January or in August, have had the rightful power to have obtained the judgment notes actually taken. Had they taken judgment thereon, there can be no doubt but that their preference would have been sustained. The vice in the conduct of the Rubber Company and The Candee Company consisted in their attempting to tie up the corporation against the power to give like preferences in favor of others. It was, in a certain sense, a new attempt; it was in the line of efforts of creditors to secure themselves; it was, on the whole, not ungenerous to Fargo & Company; and did not, considering their rights to have taken judgment notes, and the fact that none of the other creditors attempted to obtain such note or any other preference before the general crash, do any actual injury to the other creditors.

On the whole, I think the interests of justice will be best subserved by placing them in the class with the other creditors, and compelling them to pay the general costs of this litigation.

(Endorsed) Filed May 4, 1899. S. W. BURNHAM, Clerk.

And on, to-wit, the 4th day of May, 1899, in the May adjourned term of said court in the record of proceedings thereof said entitled cause before the Honorable Christian C. Kohlsaat, rict Judge, appears the following entry, to-wit:

ORDER. Order of May 4, 1899.

CIRCUIT COURT OF THE UNITED STATES,

Northern District of Illinois,

Northern Division.

Thursday, May 4, 1899.

esent: Hon. Christian C. Kohlsaat, District Judge. By ion of the Hon. Peter S. Grosscup, Circuit Judge.

erican Oak Leather Company
s vs. In Equity.
H. Fargo & Company et al.

s comes the Complainant, the American Oak Leather Com- by its solicitor and presents its amendment to the Bill of laint herein in the words and figures following, to wit:

nd now comes the complainant, the American Oak Leather npany and by leave of court first had and obtained, amends ill filed herein by adding the following allegation:

hat since the filing of the bill and the answer of the Metropoli- National Bank herein, the real property conveyed by said C. Fargo & Co. to said Bank situated at Dixon, Illinois, has been under a decree of the Circuit Court of Lee County, Illinois, suit to enforce certain mechanics liens which existed against property prior to the conveyance to said Bank, to which said Bank was a party defendant, and that the proceeds of sale was not more than sufficient to pay the liens which were to be prior to the title of said Bank under its said deed.

id bill is further amended by striking out the following par- ph in the prayer for relief, to wit:

at said deed recorded in the Recorder's Office in and for the ty of Lee, in the State of Illinois, conveying said factory erty, being the real estate hereinabove described to said Metropolitan National Bank of Chicago, be vacated, set aside and held for naught and that said Metropolitan National

"Bank of Chicago be ordered and directed by this court to
"said real estate forthwith to the receiver to be appointed
"cause who shall hold said real estate when so conveyed to
"ject to and to abide the final decree in this case."

And the Court having examined the same and being no
advised in the premises denies the rights of said Complainan
such amendment.

And, on the same day, to-wit, the 4th day of May, 1899,
May adjourned term of said court, in the record of proc
thereof in said entitled cause before the Hon Peter S. Gr
Circuit Judge, appears the following entry, to-wit:

Order confirming master's report, entered May 4, 1899.

677 UNITED STATES CIRCUIT COURT

Northern District of Illinois.

Northern Division,

Thursday, May 4, 1

Present Hon. Peter S. Grosscup, Circuit Judge.

American Oak Leather Co.
vs. } 24,238.
C. H. Fargo and Co. et al.

678 This cause coming on for a hearing upon the pleading
upon the report of Henry W. Bishop, Master in Chancery,
herein on the 17th day of April, 1899, and upon the various e
tions of the parties filed to said report (the time for filing said e
tions, as limited by the agreement of the parties and a pre
order of this Court entered thereon, having expired), and the C
having heard the arguments of counsel for the respective par
and being fully advised in the premises, it is ORDERED, ADJU
AND DECREED as follows:

First: That all the exceptions filed to said Master's report
and the same are, hereby overruled, and that said Master's re
and every part thereof be and the same is hereby approved, rat
and confirmed.

Second. That the judgment entered in this cause on the 6th
of August, 1896, against C. H. Fargo & Co. in favor of the
fendant, The United States Rubber Company, for $145,400;
judgment entered in this Court on the 6th day of August, 18

Order confirming master's report, entered May 4, 899

gainst C. H. Fargo & Co. in favor of defendant, L. Candee & Company, for the sum of $38,300; the judgment entered in the Circuit Court of Cook County, Illinois, on the 6th day of August, 896, against C. H. Fargo & Co. in favor of the defendant, The Metropolitan National Bank; the warranty deeds dated August 6th, 896, executed by C. H. Fargo Co. to defendant, Metropolitan National Bank, conveying real estate in the City of Dixon, Lee County, Illinois, as set forth in the bill of complaint; and the assignment executed August 6th, 1896, by C. H. Fargo & Co. to the defendant, United States Rubber Company of all the book accounts, credits, choses in action and bills receivable of said C. H. Fargo & Co., are fraudulent in law, (though not at the time believed by the parties to be such, but on the contrary believed to have been fair within their rights) as against the other creditors of C. H. Fargo & Co. hereinafter named, and that said judgments, conveyances and assignment be and the same are hereby annulled, set aside and held for naught, and that said defendant, the Metropolitan National Bank, do re-convey said real estate to Receiver heretofore appointed in this cause.

Third. The Court finds that at the time of the appointment of the Receiver herein, there was due from C. H. Fargo & Co. to those of its creditors who are formal parties to this cause, the amounts set opposite their respective names as follows:

American Oak Leather Co.	$ 12,840 56
Pfister & Vogel Leather Co.	17,570 55
Thomas E. Wilder and John Wilder, partners as Wilder & Company,	4,595 95
Eagle Tanning Works,	2,500 24
United States Rubber Company,	142,424 81
L. Candee & Company,	36,530 00
Metropolitan National Bank,	50,000 00
The United States Leather Company	9,887 25
Lambeau Leather Company,	6,961 76

And it appearing to the court, that under the order heretofore entered on the 11th day of March, 1897, the following named creditors of C. H. Fargo & Co. filed their affidavits of claim with said Master and duly paid to said Master, as required by said order, their pro rata assessments on account of the expenses and solicitors' fees for the prosecution of this cause by the complainant, and that the formal parties to this cause by their respective counsel have agreed in open Court that the amounts claimed by such creditors in their affidavits respectively are the correct amounts due to them from C. H. Fargo & Co., the Court doth find that such creditors are as follows, and that at the time of the appointment of the Re-

Order confirming master's report, entered May 4, 1899

ceiver herein, there was due to them the amounts set opposite their respective names, as follows:

The Boot & Shoe Recorder	$ 231 88
Bour & Co	75 00
Senneff, Oddy & Company	17 06
B. G. Robinson	17 80
Dixon Power & Lighting Co.	33 50
Dixon Ice Company	23 35
Cordia M. Malone	12 00
Lida R. Malone	8 00
Wycoff, Seamens & Benedict	35 40
Charles S. Tuck	20 19
Mooney & Buetter	18 75
A. A. Putnam	191 19
The Acme Sign Printing Co.	269 21
J. W. Bruhnke	7 00
City National Bank of Dixon	10,500 00
Dixon National Bank	3,675 00
Philip Hano & Co.	270 72
George G. Pope & Co.	225 28
S. N. Juneau	213 91
Henry Shanovosky	100 00
Mullen & Co	901 65
Phelps, Dodge & Palmer Co	143 60
The Sewing Machine Supplies Company	338 32
"The Cherry Circle"	45 00
H. A. Brake & Bros.	33 85
Charles F. Baker & Co.	30 89
Wilder & Company	167 90
Wilder & Company	4,595 95
Michael Coffey	8 25
Henry B. George & Co.	2,660 80
Osgood & Co.	8 65
G. S. Mackenzie	40 00
E. E. Robertson	14 40
The F. Tuchfarber Co.	360 00
E. A. Fargo	1,973 35
Colburn Fuller & Co.	692 56
New York Shield Co.	254 85
Daniel Curran	26 64
B. F. Shaw	21 40
The Cycling West Publishing Co	102 00
David Cummings & Co.	907 20
Pfister Vogel Leather Co.	17,557 20

Order confirming master's report, entered May, 4 1 98.

James H. Wilkerson	80 38
John V. Farwell & Co.	196 22
Franklin MacVeagh	93 75
Henry Kleine & Co.	48 60
United States Leather Co.	9,887 25
J. Weil & Bros.	258 36
The Barbour Brothers Co.	407 94
A. W. Hayward & Co.	32 45
The Sachs Shoe Mfg. Co.	56 70
Tubular Rivet & Stud Co.	1,069 77
Chicago & Eastern Illinois R. R. Co.	30 83
J. R. Leeson & Co.	193 80
Ross, Meyer Mfg. Co.	703 98
P. A. Field & Co	729 74
Grand Detour Plow Co.	16 28
Albert Trostel & Sons	15 44
McKay, Bigelow Heeling Machine Assn.	214 23
Eagle Tanning Works	2,500 24
Frank W. Witcher & Co.	4 31
The American Oak Leather Co.	12,840 56
S. A. White	12 50
The Davis Boot & Shoe Co.	629 63
Wilbur H. Davis & Co.	52 45
Dana C. Johnson	5 06
Hamiston, Keeling & Co.	30 00
Alfred S. Hottle	241 51
C. M. Vom Baur	9 76
The R. Hoehn Co.	228 37
Shoe & Leather Review	92 31
C. H. Putnam & Co.	117 00
Willimantic Linen Co.	292 40
C. C. Lawrence & Co.	176 25
Voelfel Leather Co.	1,125 00
Grand View Hotel	1,000 00
Kimball Brothers Shoe Co.	1,473 75
Kane Bros. & Co.	13 50
George H. Hahn	6 00
C. G. Phinney Counter Co.	187 20
Champion Nailing Machine Co.	388 20
John P. Kennedy	14 75
C. Beck & Sons	6 88
Estella Fletcher	10 08
Izzie Daw	1 66
George H. Squires	42 24

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r confirming
ster's report.
tered May 4,
9.

	J. Walter Thompson Co.	22,452 68
	Henry Schnellbach	3 53
	H. M. George & Co.	199 50
	Regent Manfg Co.	233 87
	Goodyear Rubber Co.	70 00
	University of Chicago Weekly	33 17
	Goldsmith, Rosenbush & Levie	43 35
	Shattuck & Binger	705 00
	The Singer Mnfg Co.	74 72
	Cycling Gazette	100 00
	J. & H. Mayer	292 00
	W. J. McBride	78 95
	Boston Blacking Co.	699 75
	Chase, Merritt & Co.	504 25
	Carson Pirie Monthly Co.	54 50
	Dry Goods Reporter Co.	100 00
	Continent Shoe Co.	32 88
	T. J. Shay & Co.	55 80
	C. C. Farwell & Co	1,957 50
	A. F. Gallum & Sons	409 51
	Lambeau Leather Co.	6,961 76
	Thilpmany Pulp — Paper Mills	115 70
	Milwaukee Tack Co.	42 38
	Stowe, Bills & Hawley	219 00
	Weir Bros. Paper Co.	14 29
	W. W. Spalding	1,160 84
681	H. Michaels & Co.	216 76
	Farnsworth, Hoyt & Co.	520 95
	Calvert Lithographing & Engraving Co.	315 00
	Fletcher Manfg. Co.	1,181 60
	Carver Cotton Gin Co	53 10
	Rousmanierre, Williams & Co	184 48
	B. E. Cole & Co.	2,500 00
	Crooks, Root & Co.	96 30
	Wachusett Mills	175 00
	M. L. Hiller & Sons	1,609 52
	L. A. W. Bulletin & Good Roads	462 10
	Spinney, Virtue & Co.	186 50
	The Trip Giant Leveller Co.	121 50
	E. H. Van Ingen & Co.	1,078 09
	Pliable Shoe Co.	59 63
	Easton Boot & Shoe Co.	5,562 67
	A. W. Shaw & Co.	2,470 00
	Hilliard & Merrill	744 30

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Order confirming master's report, entered May 4, 1899.

Estabrook-Anderson Shoe Co.	10,000 00
A. J. Marcus & Co.	273 40
Consolidated Hand Method Lasting Machine Co.	285 33
The R. J. Gunning Co.	617 14
George H. Van Pelt	1,115 98
I. P. Farnum,	45 45
Gus Weimerstrom	655 00
Consumers Box Manfg. Co.	400 46
Hurley Printing Co.	685 30
Frank E. Hansell	9 73
Julius Klueffer Paper Box Co.	1,183 05
M. H. Merriam	102 25
Weymouth Shoe Supply Co.	4,239 45
W. W. Shinkle	9 63
Thomas & Co.	515 53
A. C. McClurg & Co.	23 28
Chicago Directory Company	261 00
Lucius Beebe & Sons	7,095 00

It is further ordered, adjudged and decreed, that Receiver, from the moneys in his hands, realized from the assets of C. H. Fargo & Co., pay the Master's fee herein which is hereby fixed at the sum of Fifteen Hundred Dollars ($1500.00), and also pay the proper disbursements in the course of administration, including proper allowances for Receiver's and solicitors' fees to be hereafter determined, and that thereafter, the said Receiver do pay all the moneys now in his hands, or hereafter to be realized from said assets, to the above named creditors of C. H. Fargo & Co. pro rata according to the amounts of their respective claims.

Fourth:—It is further ordered, adjudged and decreed, that the complainant do have and recover from the defendants except C. H. Fargo & Co. and John W. Arnold its costs herein, other than the Master's fee, and do have execution therefor pursuant to the practice of this Court.

And, on the same day, to-wit, the 4th day of May, 1899, there was filed in the office of the Clerk of said Court the Petition for Appeal of defendants, in the following words and figures, to-wit:—

United States of America,
684 Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES

Northern District of Illinois,

Northern Division.

The American Oak Leather Company, a corporation, etc.
vs.
C. H. Fargo & Co., a corporation, United States Rubber Company, a corporation, L. Candee & Company, a corporation, The Metropolitan National Bank of Chicago, a corporation, and John W. Arnold, United States Marshal.
} In Equity, No. 24,23[illegible]

Petition for Appeal.

Petition for appeal, filed May 4, 1899.

The above named defendants, United States Rubber Company and L. Candee & Company, and The Metropolitan National Bank of Chicago, conceiving themselves aggrieved by a final decree entered in the above entitled cause on the Fourth day of May, 1899, confirming the Master's report, etc., do hereby pray an appeal from said decree to the United States Circuit Court of Appeals for the Seventh Circuit, which appeal is taken for the reasons set forth in the assignments of error attached hereto and which are filed
685 herewith.

And these defendants pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Seventh Circuit.

Dated Chicago, May 4th, 1899.

ISHAM, LINCOLN & BEALE, and
HENRY S. ROBBINS,
Solicitors for defendants, United States Rubber Company and L. Candee & Company.
FOLLANSBEE & FOLLANSBEE,
Solicitors for Metropolitan National Bank.

686 And, on the same day, to-wit, the 4th day of May, 1899, there was filed in the office of the Clerk of said Court Assignments of Error, in the words and figures following, to-wit:

United States of America. } ss.

IN THE CIRCUIT COURT OF THE UNITED STATES,

Northern District of Illinois,

Northern Division.

American Oak Leather Company vs. C. H. Fargo & Co. et al. } In Equity. Gen. No. 24,238.

Assignment of errors, filed May 4, 1899.

Now come the defendants, the United States Rubber Company, L. Candee & Company, and the Metropolitan National Bank of Chicago, who have prayed an appeal from the final decree entered herein May 4th, 1899, and hereby assign the following errors upon the record in this case:

1. That the Circuit Court erred in entering the decree in this case.

2. That the Circuit Court, having by said decree approved and confirmed the master's report filed in said cause on April 17th, 1899, erred in not thereupon dismissing for want of equity the bill of complaint at complainant's costs, including the costs of receivership.

Wherefore the said parties pray that the said decree may be reversed and the case remanded with directions to dismiss the bill for want of equity.

UNITED STATES RUBBER COMPANY, and
L. CANDEE & COMPANY,
By ISHAM, LINCOLN & BEALE and
HENRY S. ROBBINS,
Their Solicitors.

METROPOLITAN NATIONAL BANK OF CHICAGO,
By FOLLANSBEE & FOLLANSBEE,
Its Solicitors.

Separate assignment of errors on behalf of the United States Rubber Company and L. Candee & Company.

Now come the defendants, the United States Rubber Company and L. Candee & Company, who have prayed an appeal from the final decree entered herein May 4th, 1899, and hereby assign the following errors upon the record in this case:

ssignment of errors filed May 4, 1899.

1. That the Circuit Court erred by the decree appealed from i adjudging that the judgments entered in favor of the United State Rubber Company and L. Candee & Company respectively, agains C. H. Fargo & Co. on August 6th, 1896, and the assignment o accounts, bills receivable, etc., made on the same day by C. H Fargo & Co to the defendant United States Rubber Company, wer fraudulent in law as against the creditors of C. H. Fargo & Co. an in setting the same aside.

2. That the Circuit Court erred by the decree appealed from i adjudging that the judgments entered in favor of the United State Rubber Company and L. Candee & Company respectively, agains C. H. Fargo & Co. on August 6th, 1896, were fraudulent in law a against the creditors of C. H. Fargo & Co. and in setting aside th same.

3. That the Circuit Court erred by the decree appealed from i adjudging that the assignment of accounts, bills receivable, etc. made on the 6th day of August, 1896, by C. H. Fargo & Co. to th defendant United States Rubber Company, were fraudulent in la as against the creditors of C. H. Fargo & Co. and in setting asi the same.

4. That the Circuit Court erred in not dismissing, as to th United States Rubber Company and L. Candee & Company, th complainants bill, for want of equity.

Wherefore the said parties pray that the said decree may be re versed and the case remanded with directions to dismiss the bill fo want of equity, etc.

UNITED STATES RUBBER COMPANY,
689 L. CANDEE & COMPANY,
By ISHAM, LINCOLN & BEALE, and
HENRY S. ROBBINS,
Solicitors.

Separate Assignment of Errors by the Metropolitan National Ban of Chicago.

Now comes the defendant, Metropolitan National Bank of Ch cago, who has prayed an appeal from the final decree herein Ma 4th, 1899 and hereby assigns the following errors upon the reco in this case.

1. That the Circuit Court erred in and by said decree in a judging that the judgment entered in favor of the Metropolita National Bank of Chicago against C. H. Fargo & Co. in the Circu Court of Cook County on August 6th, 1896, and the conveyance real estate from C. H. Fargo & Co. to the Metropolitan National Ban

of Chicago, made August 6, 1896, were fraudulent in law as against the creditors of C. H. Fargo & Co. and in not dismissing, as to the Metropolitan National Bank of Chicago, the bill at complainant's costs. Assignment of errors, filed May 4, 1899.

Wherefore, the said party prays that the said decree may be reversed and the case remanded with directions to dismiss the bill for want of equity.

METROPOLITAN NATIONAL BANK OF CHICAGO,
By FOLLANSBEE & FOLLANSBEE,
Its Solicitors.

(Endorsed) Filed May 4, 1899.

S. W. BURNHAM,
Clerk.

[89] And, on the same day, to wit, the 4th day of May, 1899, in the May Adjourned Term of said Court in the record of proceedings thereof in said entitled cause before the Honorable William J. Allen, District Judge, appears the following entry, to-wit:

[91] ORDER.

Order allowing appeal, entered May 4, 1899.

CIRCUIT COURT OF THE UNITED STATES,
Northern District of Illinois,
Northern Division.

Thursday, May 4, 1899.

Present, Hon. William J. Allen, District Judge.

The American Oak Leather Company, a corporation, etc.,		
3,238	vs.	
C. H. Fargo & Co., a corporation, United States Rubber Company, a corporation, L. Candee & Company, a corporation, The Metropolitan National Bank of Chicago, a corporation, and John W. Arnold, United States Marshal.		In Equity.

Now comes the defendants, United States Rubber Company, L. Candee & Company, and The Metropolitan National Bank of Chi-

Order allowing appeal, entered May 4, 1899.

cago, and file their petition for appeal and assignment of error and the following order is entered:

The foregoing prayer for appeal is allowed upon said appellants filing with the Clerk of this Court a bond to the complainant in the sum of One Thousand Dollars to answer all damages and costs if said appellants shall fail to sustain their appeal, and this order of appeal shall operate as a Supersedeas.

692 And on the same day, to-wit the 4th day of May, 1899, there was filed in the office of the Clerk of said Court the Appeal Bond in the following words and figures, to wit:

Appeal bond, filed May 4, 1899.

693 APPEAL BOND.

Know all men by these presents, That United States Rubber Company, a corporation, L. Candee & Company, a corporation, and The Metropolitan National Bank of Chicago, a corporation, as principals, and Elbridge G. Keith of Chicago, Cook County, Illinois, as surety, are held and firmly bound unto the American Oak Leather Company, a corporation, in the penal sum of one thousand Dollars lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, the successors of said principals respectively, and the heirs, executors and administrators of said surety, jointly and severally by these presents.

Sealed with our seals and dated this fourth day of May, in the year of Our Lord one thousand eight hundred and ninety-nine.

The condition of the above obligation is such, that whereas in a suit in Chancery pending in the Circuit Court of the United States for the Northern District of Illinois, wherein the above named obligee is complainant and the above named United States Rubber Company, L. Candee & Company and the Metropolitan National Bank of Chicago, together with C. H. Fargo & Co., a corporation, and John W. Arnold, United States Marshal, are defendants, a decree was entered on the fourth day of May, 1899, setting aside certain judgments and certain conveyances and an assignment, as therein specified, and directing a distribution of assets in the hands of the Receiver duly appointed in said cause, from which decree the said principal obligors have prayed and obtained an appeal to the United States Circuit Court of Appeals for the Seventh
694 Circuit.

Now Therefore, The condition of this obligation is such that if the said United States Rubber Company, L. Candee & Company,

of the Metropolitan National Bank of Chicago shall prosecute their appeal with effect and shall pay all damages and costs sustained by said The American Oak Leather Company, in case said decree appealed from shall be affirmed in said United States Circuit Court of Appeals, then the above obligation to be void, otherwise to remain in full force and effect. Stipulation, filed May 4, 1899.

Dated: Chicago, Illinois, May 4th, 1899.

UNITED STATES RUBBER COMPANY (Seal)
By CHARLES B. ALLEN,
Its Agent and Attorney in Fact.

L. CANDEE & COMPANY, (Seal)
By CHARLES B. ALLEN,
Its Agent and Attorney in Fact.

THE METROPOLITAN NATIONAL BANK (Seal)
By ELBRIDGE G. KEITH,
President.

ELBRIDGE G. KEITH, (Seal)
Surety.

Approved:
WILLIAM J. ALLEN,
Judge.

May 4, 1899.

(Endorsed) Filed May 4, 1899.
S. W. BURNHAM,
Clk.

And on, to-wit, the 4th day of May, 1899, there was filed in the office of the Clerk of said Court the stipulation of parties, in the following words and figures, to-wit:

United States of America, } ss. Appeal bond, filed May 4, 1899.
Northern District of Illinois. }

IN THE CIRCUIT COURT OF THE UNITED STATES,

In and for said District.

American Oak Leather Company, } In Chancery.
vs. } No. 24,238.
C. H. Fargo & Co. et al.

It is hereby stipulated and agreed, that on the eighteenth day of January, 1897, an injunction was issued in the above entitled cause, restraining the Metropolitan National Bank from executing or de-

Stipulation, filed May 4, 1899

livering any deed of conveyance, lease or otherwise, of certain re estate therein described, and herein designated as the Dixon pro erty.

That on the second day of February following, the said Metro politan National Bank prayed an appeal from said order to th United States Circuit Court of Appeals for the Seventh District and on the third day of February, 1897, filed an appeal bon therein, which was duly approved by the court.

That thereafter, and on the sixth day of April, 1897, the solici tors for said complainant made a motion before his honor, Judg Grosscup, to vacate that portion of the order so entered on th eighteenth day of January aforesaid, which restrained the said ban from executing or delivering any deed of conveyance, lea or otherwise of the property described in said order January 18th, 1897, aforesaid, being the property known the Dixon property; that on the hearing of said motion th solicitors for said Bank opposed the same upon the ground th 697 it was made for the purpose of taking away from the said Bank right of appeal from said order of January 18th, 1897, afor said, and preventing a review of the decision of the court appointi a receiver of the property of the said defendant, C. H Fargo & Co pany, made on this date, and granting said injunction aforesaid; th upon due consideration, and because of said objection aforesaid, t court refused to vacate that portion of said decree aforesaid.

It is further stipulated and agreed by and between the parties this cause, that the foregoing stipulations shall be, and are here made a part of the record in this cause, and shall be considered the court as fully as if said matters had been made a part of the re ord in the usual way.

SMITH, HELMER, MOULTON & PRICE,
Solicitors for Complainan

ISHAM, LINCOLN & BEALE,
Per G. A. F.
Solicitors for the Rubber Compani

FOLLANSBEE & FOLLANSBEE,
Solicitors for the Metropolitan National Ban

(Endorsed) Filed May 4, 1899.

S. W. BURNHAM,
Cler

ss. Northern District of Illinois, Northern Division. } ss.

I, S. W. Burnham, Clerk of the Circuit Court of the United Clerk's certificate.
tes for said Northern District of Illinois, do hereby certify the ore and foregoing to be a true and complete transcript of the rec- l of all the proceedings had in said court in the cause entitled The merican Oak Leather Company vs. C. H. Fargo & Co., a cor- ration, United States Rubber Company, a corporation, L. Candee mpany, a corporation, John W. Arnold, United States Marshal r said District, and The Metropolitan National Bank of Chicago, orporation, as the same appear from the original files and rec- ds of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed e seal of said court at my office in the city of Chicago, in said strict, this Fifth day of May, 1899.

(Seal)

S. W. BURNHAM,
Clerk.

United States of America. } ss.

e President of the United States, to the American Oak Leather Citation.
Company, complainant; W. J. McBride and others, interven- ing petitioners; Estabrook-Anderson Shoe Company and Lam- beau Leather Company, intervening petitioners; University of Chicago Weekly, and other intervening petitioners; Crooks, Root & Co. and others, intervening petitioners; Thilmany Pulp & Paper Mills and others, intervening petitioners; Thomas E. and John E. Wilder, intervening petitioners; United States Leather Company, intervening petitioner; Pfister & Vogel Leather Company, intervening petitioner; Eagle Tanning Works, intervening petitioner; Greeting:

You are cited and admonished to be and appear at a United States rcuit Court of Appeals for the Seventh Circuit to be holden at lwaukee, Wisconsin, within thirty (30) days from the date here pursuant to an appeal by United States Rubber Company, L. ndee & Company, and the Metropolitan National Bank of Chi- go, allowed in open Court by the Circuit Court of the United tes for the Northern District of Illinois in a cause wherein said ited States Rubber Company, L. Candee & Company and the tropolitan National Bank of Chicago are appellants and you are

appellees, to show cause, if any there be, why the decree entered by said Circuit Court appealed from, as shown by the petition for appeal filed and allowed in said Circuit Court, should not be corrected, vacated, or set aside and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William J. Allen, Judge of the said Circuit Court of the United States, this fourth day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

Dated May 4th 1899.

WILLIAM J. ALLEN,
Judge

We and each of us hereby accept service upon us of the foregoing citation this fourth day of May, 1899.

THE AMERICAN OAK LEATHER COMPANY,
W. J. McBRIDE ET AL.
ESTALROOK-ANDERSON SHOE COMPANY,
LAMBEAU LEATHER COMPANY,
UNIVERSITY OF CHICAGO WEEKLY ET AL.
CROOKS, ROOT & CO. ET AL.
THILMANY PULP & PAPER MILLS ET AL.
By SMITH, HELMER, MOULTON & PRICE,
NEWMAM, NORTHRUP & LEVINSON,
Their Solicitors

THOMAS E. & JOHN E. WILDER,
By WILLIAM J. MANNING,
Their Solicitor

UNITED STATES LEATHER COMPANY,
By ASHCRAFT & GORDON,
Their Solicitors

PFISTER & VOGEL LEATHER COMPANY,
By TENNEY, McCONNELL, COFFEEN & HARDING,
Their Solicitors

EAGLE TANNING WORKS,
By WILLIAM J. MANNING,
Its Solicitor

(Indorsed) Filed May 4, 1899.

S. H. BURNHAM,
Clerk

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, A. D. 1898.

No. 599.

AMERICAN OAK LEATHER COMPANY, PFISTER & VOGEL LEATHER COMPANY, THOMAS E. WILDER AND JOHN WILDER, COPARTNERS AS WILDER & COMPANY, EAGLE TANNING WORKS, UNITED STATES LEATHER COMPANY, LAMBEAU LEATHER COMPANY, THE BARBER BROS. COMPANY, BOSTON BLACKING CO., BULLETIN & GOOD ROADS, CARSON-PIRIE MONTHLY CO., CARVER COTTON GIN CO., CALVERT LITHOGRAPHING & ENGRAVING CO., B. E. COLE & CO. COLBURN, FULLER & CO., CONSUMERS' BOX MANUFACTURING CO., THE CONTINENT SHOE COMPANY, CROOKS, ROOT & CO., CYCLING GAZETTE, EASTON BOOT & SHOE COMPANY, ESTABROOK-ANDERSON SHOE CO., FARNSWORTH, HOYT & CO., I. P. FARNUM, C. C. FARWELL & CO., P. A. FIELD & CO., FLETCHER MF'G CO., A. F. GALLUM & SONS, H. M. GEORGE & CO., GOLDSMITH, ROSENBUSH & LEVIE, GOODYEAR RUBBER CO., THE R. J. GUNNING CO., M. L. HILLER & SONS, A. J. MARCUS & CO., J. & H. MAYER, H. MICHAELS & CO., MILWAUKEE TACK CO., W. J. McBRIDE, PLIABLE SHOE CO., ROUSE, MANIERE, WILLIAMS & CO., SHATTUCK & BINGER, A. W. SHAW & CO., T. J. SHAY & CO., THE SINGER MANUFACTURING COMPANY, W. W. SPAULDING, SPINNEY VIRTUE & CO., STOWE, BILLS & HAWLEY, THILMANY PULP & PAPER MILLS, TUBULAR RIVET & STUD COMPANY, UNIVERSITY OF CHICAGO WEEKLY, GEORGE H. VAN PELT, WACHUSETT MILLS, WEIR BROS. PAPER CO., CONSOLIDATED HAND METHOD LASTING MACHINE CO., HILLIARD & MERRILL, TRIPP GIANT LEVELLER CO., DRY GOODS REPORTER CO. AND E. H. VAN INGEN & CO.,

Appellants,

vs.

UNITED STATES RUBBER COMPANY, L. CANDEE & CO., THE METROPOLITAN NATIONAL BANK OF CHICAGO, AND C. H. FARGO & CO.,

Appellees.

MR. JACOB NEWMAN,
MR. FREDERICK A. SMITH,
MR. FRANK A. HELMER,
MR. WILLIAM J. MANNING,
MR. SAMUEL P. McCONNELL,
MR. HORACE KENT TENNEY,
MR. GEORGE W. NORTHRUP, JR.,
Counsel for Appellants.

MR. EDWARD S. ISHAM,
MR. WILLIAM G. BEALE,
MR. HENRY S. ROBBINS,
MR. GILBERT E. PORTER,
MR. GEORGE A. FOLLANSBEE,
MR. MITCHELL B. FOLLANSBEE,
Counsel for Appellees.

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in the Circuit Court of the United States for the Northern Pleas.
of Illinois—Northern Division, in Chancery sitting at the
States court room in the City of Chicago, in said District
ision, before the Hon. Peter S Grosscup, Circuit Judge of
ted States for the Seventh Judicial Circuit, on Thursday,
rth day of May, in the year of our Lord one thousand eight
l and ninety nine, being one of the regular days of the De-
term of said Court, 1898, and of our independence the one
l and twenty third year.

S. W. BURNHAM,
Clerk.

The American Oak Leather Company, a Corporation, etc.
vs.
C. H. Fargo & Company, a Corporation, et al.
} In Chancery. 24238

Be it remembered that on this day, to-wit—the Seventh day of October, 1896, there was filed in the clerk's office of said Court certain affidavit made by Elbridge G. Keith, which said Affidavit is in the words and figures following, to wit:

Affidavit of E. G. Keith, filed Oct. 7, 1896.

2 AFFIDAVIT OF ELBRIDGE G. KEITH.

United States of America,
Northern District of Illinois,
Northern Division.
} ss.

IN THE CIRCUIT COURT OF THE UNITED STATES

For the Northern District of Illinois.

Northern Division.

The American Oak Leather Company, a corporation, etc.
vs.
C. H. Fargo & Company, a corporation, et al.
} In Chancery. G. N. 24238—T. N. 85

Elbridge G. Keith, being first duly sworn, upon oath depose and says that he is the president of the Metropolitan National Bank of Chicago, a corporation, one of the defendants in the above entitled cause and has been such president for several years last past.

Affiant further states that the corporation known as C. H. Fargo & Company, wholesale dealers in boots and shoes, has for several years last past been doing business with the said Metropolitan National Bank, has kept a deposit account therein and has from time to time borrowed money therefrom to use in carrying on its business aforesaid.

3 Affiant further says that for the purpose of establishing its credit with the said bank, the said C. H. Fargo & Co. did from time to time furnish to said bank statements of its assets and liabilities

Affidavit of E. G. Keith, filed Oct. 7, 1896.

hich showed it to have assets largely in excess of its liabilities; d by reason thereof, and on account of the manner in which it d transacted its business with affiant's bank, it established a large e of credit therewith.

Affiant further states that the line of credit so extended to the d C. H. Fargo & Company was the sum of fifty thousand dollars 50,000), and at times said bank had loaned the said corporation temporary use even more than that sum, which loans had, for e most part, been promptly met or renewed at the maturity reof.

Affiant states that, relying upon said representations aforesaid, e said bank had loaned to said C. H. Fargo & Company oneys from to time, so that on or about the first y of August, 1896, it had outstanding notes presenting an indebtedness of said company to the amount of nty thousand dollars ($40,000), and that in view of the stringency the money market, at or about that time said bank gave notice to d C. H. Fargo & Company that it desired to call in the said ney so loaned to the amount aforesaid from the said C. H. Fargo Company, not later than the first day of November, 1896.

Affiant further states that in response to said notice, Charles E. rgo, the president of said company, shortly thereafter called at iant's bank and stated to affiant, that owing to the light sales d company were making, the difficulty of making collections and e general disturbance of business that existed on account of the nding presidential election, not only would said company not be le to pay in said moneys so demanded, as soon as named, but that would be obliged to borrow from the said bank up to the full line of its credit of $50,000 aforesaid, being the sum of ten thousand dollars in addition to the amount which the bank then held against the said C. H. Fargo & Company.

Affiant further states that the said president of the said C. H. rgo & Company then and there represented to him that the said mpany was amply solvent; that its assets very largely exceeded liabilities, and that there was no question but what the former uld in any event be sufficient to pay off all its outstanding in btedness.

Affiant further states that the said C. H. Fargo & Company had eretofore given the said bank its judgment promissory notes for the debtedness from time to time owing by it to said bank, and after e consideration this affiant finally proposed and agreed with the esident of said corporation that in case the said C. H. Fargo & mpany would give its judgment notes, not only for the $10,000 requested to be loaned, but for the entire indebtedness that would

Affidavit of E. G. Keith, filed Oct. 7, 1896.

then be owing by said C. H. Fargo & Company to said bank, th said bank would loan said company said additional sum of $10,00

Affiant further states that the said president of said compan then and there expressed his willingness so to do, and then and the informed affiant that said company had theretofore given its judgme notes to the United States Rubber Company and L. Candee & Com pany for the amounts that it was indebted to them, respectivel and that he would get the necessary authority from his compan authorizing it to make judgment notes to said bank for the amou of its indebtedness to said bank as aforesaid.

Affiant further states that thereafter the said C. H. Fargo, Pre ident as aforesaid, reported that he had got the authority from h company, authorizing him to execute said judgment notes aforesai

Whereupon the said bank loaned the said C. H. Fargo & Com

5 pany said additional sum of $10,000 and received its two judg ment promissory notes therefrom for the sum of twenty-fi thousand ($25,000) each, and upon receipt of the same it paid ov to said C. E. Fargo as president of the said C. H. Fargo & Com pany said sum of $10,000 and surrendered to him said plain note evidencing said indebtedness of $40,000 aforesaid.

Affiant further states that in the meantime he learned the exte of the indebtedness of the said C. H. Fargo & Company to sa United States Rubber Company. and the said L. Candee & Com pany, and also learned that they had some kind of an agreeme with the said C. H. Fargo & Company, by which they were auth ized to secure their indebtedness in advance of that of any of th other creditors of the said Company.

Affiant further states, that thereupon he caused steps to be take to ascertain just what advantages the said C. H. Fargo & Compan had given to said two companies aforesaid and having learned tha they were entitled under their agreement with said company, t enter up their judgments in advance of anyone else, as aforesai and having learned, also, the extent of the indebtedness of the sa C. H. Fargo & Company to them, he caused further steps to b taken looking towards the payment or security of the said tw judgment notes aforesaid, and that upon receiving a propositio from the said C. H. Fargo & Company to purchase from it it manufacturing plant at Dixon, Illinois, for the sum of twenty-fi thousand dollars ($25,000) he took said suggestion under consider ation with a view of determining the desirability thereof to sa bank.

Affiant further states, that during the entire negotiations betwee his said bank and the said C. H. Fargo & Company, he, and the

Affidavit of E. G. Keith, filed Oct. 7, 1886.

acting for him, were repeatedly assured by the officers of, and those acting on behalf of said C. H. Fargo & Company, that its assets were very largely in excess of its liabilities; that his present recollection is, that it was repeatedly stated that the assets of C. H. Fargo & Company were then not less than $550,000 while their liabilities did not exceed the sum of $400,000, and he, and those acting for him, were also assured that there was no question whatever as to the ability of said company to pay its debts in full, in any event whatever.

Affiant further avers, that he caused interviews to be held by persons representing his said bank with parties representing the said two companies aforesaid, and that at such interviews it was learned that said companies were contemplating the taking of active measures toward the collection of the indebtedness due to them from the said C. H. Fargo & Company, and that thereupon his affiant deemed that it would be for the best interest of both parties concerned not to act at cross purposes with each other, but to unite their efforts to collect their respective claims against said company.

Affiant further states, that it is not true that said bank and said companies consolidated their claims, but what they did do was to agree to unite their efforts to collect their respective claims, and in order to bring about such an agreement, it was deemed wise to stipulate between themselves, as they had a perfect right to do, that the result of their efforts should be distributed in the proportion of their respective claims, and that if either party received a larger percentage on his claim than the other party did as the result of their efforts, he would account to such other party for a sum sufficient to make the percentage of payments of their respective claims equal.

Affiant further states, that in view of what he learned as to the determination of the said United States Rubber Company and L. Candee & Company, as aforesaid, he determined to endeavor to secure the payment of the Bank's said two notes as aforesaid, and to that end he accepted the proposition of the said C. H. Fargo & Company for the transfer of its said plant at Dixon in payment of one of said notes of $25,000, as aforesaid, and he accordingly received deeds of said property and canceled and surrendered one of said notes and thereupon caused a judgment to be entered upon the other of said notes in the Circuit Court of Cook County, Illinois, and levies to be made upon the tangible property of said C. H. Fargo & Company at Chicago and at Dixon. He avers, however, upon information and belief, that such levies were made subsequent in point of time to levies made upon the same

Affidavit of E. G. Keith, filed Oct. 7, 1896.

property under executions issued out of the Circuit Court of the United States for the Northern District of Illinois, in favor of the said United States Rubber Company and the said L. Candee & Company.

Affiant further states upon information and belief, that the said property at Dixon, so conveyed to said bank as aforesaid, and the said tangible property so levied upon as aforesaid, did not constitute the entire assets of said C. H. Fargo & Company, nor did they together with the outstanding book accounts and bills receivable of said company, constitute its entire assets. Affiant is informed and believes that said C. H. Fargo & Company had considerable property other than that above referred to, and that among the property so held by it at the time of said conveyance and the obtaining of said judgments as aforesaid, was the three-story and basement brick building, Nos. 300 and 302 South Main Street, Pueblo, Colorado, and known as "Fargo Hotel" on lots fifteen (15) and sixteen (16) block sixty-eight (68) Pueblo; that he is informed and believes that the value of said property in good times was supposed to be about forty thousand dollars ($40,000) and that a conservative estimate on it now is twenty thousand dollars ($20,000) that the building on said lots fifteen and sixteen is a three-story

8 brick hotel about two blocks from the Union Depot in Pueblo, and that, so far as this affiant has been able to learn, said property was not encumbered at said dates aforesaid to exceed ten thousand dollars ($10,000) secured by a trust deed and the unpaid taxes thereon for 1894 and 1895, amounting to seven hundred sixty-four and 60/100 dollars ($764.60).

And further affiant saith not.

ELBRIDGE G. KEITH.

Subscribed and sworn to before me this 6th day of October, 1896.

(Seal) EDWARD DICKINSON,
Notary Public.

(Endorsed) Filed Oct. 7, 1896. S. W. BURNHAM,
Clerk.

9 And on, to-wit, the 12th day of May, 1899, there was filed in the office of the clerk of said court the petition for appeal of American Oak Leather Company, et al, in the following words and figures, to-wit:

Petition for Appeal, filed May 12, 1899.

United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,

In and for said District.

American Oak Leather Company
vs.
H. Fargo & Co., United States Rubber Company, L. Candee & Company, Metropolitan National Bank of Chicago, et al. } In Chancery. No.

Petition for an Appeal.

Your petitioners, the above named American Oak Leather Company, complainant herein, and Pfister & Vogel Leather Company; Thomas E. Wilder and John Wilder, copartners as Wilder & Company; Eagle Tanning Works; United States Leather Company; Sambeau Leather Company; The Barber Bros. Company; Boston Blacking Co., Bulletin & Good Roads; Carson, Pirie Monthly Co., Carver Cotton Gin Co., Calvert Lithographing & Engraving Co., B. F. Cole & Co., Colburn, Fuller & Co., Consumer's Box Manufacturing Co., The Continent Shoe Company; Crooks, Root & Co.; Cycling Gazette; Easton Boot & Shoe Company; Estabrook, Anderson Shoe Co., Farnsworth, Hoyt & Co., I. P. Farnum; C. C. Farwell & Co., P. A. Field & Co., Fletcher Mf'g. Co., A. F. Gallun & Sons; H. M. George & Co., Goldsmith, Rosenbush & Levie; Goodyear Rubber Co., The R. J. Gunning Co., M. L. Hiller & Sons; A. J. Marcus & Co., J. & H. Mayer; H. Michaels & Co., Milwaukee Tack Co., W. J. McBride; Pliable Shoe Co.; Rouse, Meniere, Williams & Co.; Shattuck & Binger; A. W. Shaw & Co.; E. J. Shay & Co.; The Singer Manufacturing Company; W. W. Spaulding; Spinney, Virtue & Co.; Stowe, Bills & Hawley; The Thilmany Pulp & Paper Mills; Tubular Rivet & Stud Company; University of Chicago Weekly; George H. Van Pelt; Wachusett Mills; Weir Bros. Paper Co.; Consolidated Hand Method Lasting Machine Co.; Hilliard & Merrill; Tripp Giant Leveller Co.; Dry Goods Reporter Co.; and E. H. Van Ingen & Co., intervening petitioners herein, show to this Honorable Court, that they and each of them, conceive themselves, and each of them,

Petition for appeal, filed May 12 1899.

aggrieved by the decree entered herein on the 4th day of May, A. D. 1899, in and by which it was among other things ordered, adjudged and decreed that all the exceptions filed by them, and each of them, to the Master's report herein, be overruled, and that said Master's report, and every part thereof, be approved ratified and confirmed, and that the judgments entered in this court on the 6th day of August, A. D. 1896, against C. H. Fargo & Co., and in favor of the defendant, the United States Rubber Company, for $145,400; the judgment entered in this court on the 6th day of August, 1896, against C. H. Fargo & Co., in favor of defendant L. Candee & Company for the sum of $38,300; the judgment entered in the Circuit Court of Cook County, Illinois, on the 6th day of August, 1896, against C. H. Fargo & Co., in favor of the defendant, the Metropolitan National Bank; the warranty deeds dated August 6th, 1896, executed by C. H. Fargo & Co., to defendant, Metropolitan National Bank, conveying real estate in the City of Dixon, Lee County, Illinois, as set forth in the bill of complaint; and the assignment executed August 6th, 1896, by C. H. Fargo & Co., to the defendant, United States Rubber Company, of all the book accounts, credits, choses in action and bills receivable of said C. H. Fargo & Co., were not believed by said parties to be fraudulent in law, but, on the contrary, believed to have been within their rights, and that the Metropolitan National Bank do re-

12 convey said real estate to the Receiver appointed in this cause and which finds that at the time of the appointment of the Receiver herein, there was due from C. H. Fargo & Co., to

The United States Rubber Company,	$142424
L. Candee & Company,	36530
Metropolitan National Bank of Chicago,	50000

and which orders, adjudges and decrees that the Receiver, after paying the Master's fee herein, fixed at the sum of $1500, and the proper disbursements in the course of administration including proper allowances for Receiver's and Solicitor's fees, to be hereafter determined, pay all the moneys now in his hands, or hereafter to be realized from said assets, to the creditors of C. H. Fargo & Co., mentioned in said decree, including said United States Rubber Company, L. Candee & Company and the Metropolitan National Bank of Chicago, pro rata, according to the amounts of their respective claims.

Your petitioners further show unto your Honors that heretofore on the 4th day of May, A. D. 1899, said defendants, the United States Rubber Company, L. Candee & Compaany and the Metropolitan National Bank of Chicago, filed herein their petition, praying an appeal from said order and decree to the United States C

it Court of Appeals for the Seventh Circuit, and also a certain signment of errors, and that thereupon, on the 4th day of May, D. 1899, an order was entered herein, allowing said defendants st named, to appeal to said United States Circuit Court of Apals for the 7th Circuit, and approving a certain appeal bond tenred by said defendants last named, and filed on said 4th day of May, A. D. 1899, in the clerk's office of this court.

Petition for appeal, filed May 12, 1899.

And your petitioners present and file herewith, and make a part hereof, their certain assignments of error, in which they ow and set forth the particulars in which they claim that they e aggrieved by said decree, and hereby respectfully appeal om said decree entered on said 4th day of May, A. D. 1899, for e reasons set forth in said assignments of error, to the United ates Circuit Court of Appeals, for the Seventh Circuit, and pray that is, their appeal, may be allowed, and that a transcript of the rec-d, and proceedings and papers upon which said decree was made, so much of said record, proceedings and papers as may be reired by law, or the practice of said United States Circuit Court Appeals for the Seventh Circuit, duly authenticated, may be nt to said United States Circuit Court of Appeals for the Seventh rcuit.

American Oak Leather Company,
By Smith, Helmer, Moulton & Price,
Its Solicitors.

Pfister & Vogel Leather Company,
By Tenney, McConnell, Coffeen & Harding,
Its Solicitors.

Thomas E. Wilder & John Wilder,
as Copartners as Wilder & Company,
By Wm. J. Manning,
their Solicitor.

Eagle Tanning Works,
By Wm. J. Manning,
Its Solicitor.

United States Leather Company,
By Ashcraft & Gordon,
Its Solicitors.

Lambeau Leather Company,
By Newman, Northrup & Levinson,
Its Solicitors.

The Barber Bros. Company.
Boston Blacking Co.
Bulletin & Good Roads.
Carson Pirie Monthly Co.

ition for
ppeal filed
lay 12, 1899.

Carver Cotton Gin Co.
Calvert Lithographing & Engraving Co.
B. E. Cole & Co.
Colburn, Fuller & Co.
Consumer's Box Manufacturing Co.
The Continent Shoe Company.
Crooks, Root & Co.
Cycling Gazette.
Easton Boot & Shoe Company.
Estabrook, Anderson Shoe Co.
Farnsworth, Hoyt & Co.
I. P. Farnum.
C. C. Farwell & Co.
P. A. Field & Co.
Fletcher Mfg. Co.
A. F. Gallum & Sons.
H. M. George & Co.
Goldsmith, Rosenbush & Levie.
Goodyear Rubber Co.
The R. J. Gunning Co.
M. L. Hiller & Sons.
A. J. Marcus & Co.
J. & H. Mayer.
H. Michaels & Co.
Milwaukee Tack Co.
W. J. McBride.
Pliable Shoe Co.
Rouse, Maniere. Williams & Co.
Shattuck & Binger.
A. W. Shaw & Co.
T. J. Shay & Co.
The Singer Manufacturing Company.
W. W. Spaulding.
Spinney, Virtue & Co.
Stowe, Bills & Hawley.
Thilmany Pulp & Paper Mills.
Tubular Rivet & Stud Company.
University of Chicago Weekly.
George H. Van Pelt.
Wachusett Mills.
Weir Bros. Paper Co.
Consolidated Hand Method Lasting Machine Co.
Hilliard & Merrill.
Tripp Giant Leveller Co.

Dry Goods Reporter Co., and
E. H. Van Ingen & Co.
By Newman, Northrup & Levinson,
their Solicitors.

Petition for appeal, filed May 12, 1899

Frederick A. Smith,
J. W. Northrup,
Jacob Newman,
Wm. J. Manning,
Samuel P. McConnell,
Horace Kent Tenney,
of Counsel.

(Endorsed) Filed May 12, 1899.
S. W. Burnham,
Clerk.

Assignment of errors, filed May 12, 1899.

And on the same day, to-wit, the 12th day of May 1899, there was filed in the office of the Clerk of said Court, the Assignment of Errors by United States Leather Company et al, intervening Petitioners in the following words and figures, to-wit:

United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,
In and for said District.

American Oak Leather Company
vs.
E. H. Fargo & Co., United States Rubber Company; L. Candee & Company; Metropolitan National Bank of Chicago, et al.
} In Chancery. No.

Assignment of Errors, by United States Leather Company et al, Intervening Petitioners.

And now come United States Leather Company; Lambeau Leather Company; The Barber Bros. Company; Boston Blacking Co., Bulletin & Good Roads; Carson, Pirie Monthly Co., Car-

Assignment of errors, filed May 12, 1899.

ver Cotton Gin Co., Calvert Lithographing & Engraving Co., B. Cole & Co., Colburn, Fuller & Co., Consumer's Box Manufacting Co., The Continent Shoe Company; Crooks, Root & Co., Cycle Gazette, Easton Boot & Shoe Company; Estabrook, Anders Shoe Co., Farnsworth, Hoyt & Co., I. P. Farnum; C. C. Farn & Co., P. A. Field & Co., Fletcher Mfg. Co., A. F. Gallun Sons; H. M. George & Co., Goldsmith, Rosenbush & Le
16 Goodyear Rubber Co., the R. J. Gunning Co., M. L. Hiller Sons, A. J. Marcus & Co., J. & H. Mayer; H. Michael Co., Milwaukee Tack Co., W. J. McBride, Pliable Shoe C Rouse, Maniere, Williams & Co., Shattuck & Binger A. W. Sh & Co., T. J. Shay & Co., The Singer Manufacturing Compan W. W. Spaulding, Spinney, Virtue & Co., Stowe, Bills & Hawle Thilmany Pulp & Paper Mills, Tubular Rivet & Stud Compan University of Chicago Weekly, George H. Van Pelt, Wachus Mills, Weir Bros. Paper Co., Consolidated Hand Method Lasti Machine Co., Hilliard & Merrill, Tripp Giant Leveller Co., D Goods Reporter Co., and E. H. Van Ingen & Co., intervening petitioners herein, and assign the following errors to the order a decree of said Circuit Court entered herein on the fourth day May, 1899, to wit:

First. The Circuit Court erred in denying on May 4th, 189 the motion of the American Oak Leather Company to amend t original bill of complaint herein, by showing that the Dixon re estate conveyed by the Fargo Company to the Metropolit National Bank had, since the filing of the original bill, been tak from said bank by the action of other creditors of the Fargo Co pany, not parties to this record, by enforcing the liens which e isted against the property prior to its transfer to the bank; and striking out of the prayer for relief in the original bill the requ that the deed should be set aside and the bank requiried to co
17 vey the property to the receiver.

Second. The Circuit Court erred in overruling the exception and each of the exceptions filed by the intervening petitioners also named, and each of them, to the report of Henry W. Bishop, Ma ter in Chancery, filed in the said cause on April 17th, A. D. 1899.

Third. The Circuit Court erred in overruling the exception fil by said intervening petitioners to the report of Henry W. Bisho Master in Chancery, filed in said cause on April 17, A. D. 189 which reads as follows:

"For that the Master finds that the change of the Board "Directors and the officers and the changes of the by-laws of t "Fargo Company and the resolution authorizing the judgme

Assignment of errors, filed May 12, 1899.

notes and assignment of accounts, were all for the purpose of giving preferential security to the Rubber Companies, and that the only purpose of changing tho Board of Directors and amending the by-laws was to protect the Rubber Companies against the giving by the Fargo Company of preferential securities or judgment notes to other creditors which should be superior to the security of the Rubber Companies;

"Whereas, the Master should have found that the change in the personnel of the Board of Directors and in the by laws of the Company, was made for the purpose of withdrawing from the "officers of the company all power of giving to any other "creditor security for his debt, and for the purpose of preventing other creditors from collecting their claims until the claims of the Rubber Companies were paid in full, and for the purpose of placing the Fargo Company and all its assets, in the absolute control of the two Rubber Companies, so that the two Rubber Companies might make any disposition of the Fargo Company and its assets which they saw fit, in their own interest, and to the exclusion of all other creditors."

Fourth. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master finds that the change in the Board of Directors and officers, and the changes in the by-laws of the Fargo Company, were kept secret in order to allow the Fargo Company an opportunity of getting through embarrassments apparently temporary, but not with a fraudulent intent as to the other creditors of the Company.

"Whereas, the Master should have found that in order to secure and preserve the credit of the Fargo Company and to enable it and its agents to purchase merchandise on credit after January 6, 1896, it was expressly understood and agreed and insisted upon as a part of said January arrangement, by all parties thereto, that the same should be kept and maintained secret and unknown to the world, and that the same were so kept and preserved secret and unknown to the world, with a fraudulent intent as to the other creditors of the Fargo Company."

Fifth. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master finds that the indebtedness incurred by the Fargo Company for goods purchased after January 6, 1896,

Assignment of errors, filed May 12, 1899.

" which remained unpaid on August 6, 1896, was only $142,630.9
" Whereas, the Master should have found that the amount
" said liabilities remaining unpaid on August 6, 1896, exceed
" $172,000."

Sixth. The Circuit Court erred in overruling the exception fil
by said intervening petitioners to the report of Henry W. Bish
Master in Chancery, filed in said cause on April 17, A. D. 189
which reads as follows:

" For that the Master finds that between January 6, and Aug
" 6, 1896, the Fargo Company reduced its general indebtedness
" a considerable extent;

" Whereas the Master should have found that there is no leg
" evidence in the record showing whether the Fargo Company d
" or did not reduce its said general indebtedness."

Seventh. The Circuit Court erred in overruling the exce
19 tion filed by said intervening petitioners to the report of Hen
W. Bishop, Master in Chancery, filed in said cause on Ap
17, A. D. 1899, which reads as follows:

" For that the Master finds that the Rubber Companies were
" ignorance of the fact that on January 6, 1896, the assets of t
" Fargo Company were insufficient to discharge its indebtedness

" Whereas the Master should have found that the insolvency
" the Fargo Company and its then imminent suspension were t
" first facts called to the attention of the Rubber Companies
" January at the Auditorium meetings, and were the reasons w
" the Rubber Companies' representatives were summoned in C
" cago."

Eighth. The Circuit Court erred in overruling the excepti
filed by said intervening petitioners to the report of Henry W
Bishop, Master in Chancery, filed in said cause on April 17, A. D
1899, which reads as follows:

" For that the Master finds that the advance of $50,000, and t
" giving of the judgment notes and security in question, was the r
" sult of an evident feeling on the part of all the parties to t
" transaction, and in the belief and expectation on their part, th
" through the assistance which was in this way afforded the Far
" Company, it would be enabled to continue its business succes
" fully, and become ultimately relieved of its financial embarra
" ments, and that such arrangement was entered into in go
20 " faith, and without any fraudulent intent;

" Whereas the Master should have found that said January
" arrangement was not the result of any such feeling, belief or e
" pectation, and was not entered into in good faith and witho
" fraudulent intent.

Assignment of errors, filed May 12, 1899.

"And whereas also the Master should have found that the Rubber Companies and their agents had no confidence, either in the financial condition of the Fargo Company, or in the honesty and personal integrity of the Fargos themselves, and therefore secured control of the corporation by controlling its Board of Directors and officers, compelled the Fargo Company to set apart one of the floors as the store room of the Rubber Companies, wherein to keep their consigned goods; to deposit the proceeds arising from the sale of consigned goods in a separate bank account; to keep separate books and records of all transactions between the Rubber Companies and the Fargo Company, and employed every possible agency to protect themselves, as a cautious man would have done had he believed the Fargo Company hopelessly insolvent and the Fargos themselves personally dishonest."

Ninth. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master finds that the testimony does not show "that the parties were influenced in making the January ar- "rangement, by belief of the insolvency of the Fargo Company at that time, and that the conduct of the corporation afterwards and until about the time of the entering up of the judgment notes, clearly indicated the hope and expectation that the Fargo Company would be finally relieved of its troubles;

"Whereas the Master should have found that the parties were not influenced by any such belief, and that the conduct of the Corporation did not indicate any such hope or expectation, but that on the contrary, the parties were influenced in making the January arrangement, by a firm conviction that the Fargo Company at that time was insolvent, and that its continuance in business could only be temporary, and that the January arrangement was the only possible means by which the Rubber Companies could avoid the almost certain loss of a large proportion of their claims against the Fargo Company, including the consigned goods then on hand, in all amounting to over $300,000."

Tenth. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master finds that nothing occurred between January 6 and August 6, 1896, inconsistent with the theory that the business of the corporation was carried on with an evident purpose and expectation of continuing same;

Assignment of errors, filed May 12, 1899.

"Whereas, the Master should have found that the course of
"dealing after January 6, 1896, demonstrated that the Rubber
"Companies were substantially convinced during all that period
"that the financial condition of the Fargo Company was practi-
"cally hopeless, and that its final collapse could be only temporarily
"delayed."

Eleventh. The Circuit Court erred in overruling the exceptions filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master finds that on or about August 3, 1896
"Charles E. Fargo stated to the President of the Metropolitan
"Bank that the Fargo Company would be obliged to fail unless it
"received some assistance;

"Whereas the Master should have found that Charles E. Fargo
"did not apply to, or suggest that said Bank should furnish the
"Fargo Company any assistance, but on the contrary it is clearly
"shown by the evidence that Charles E. Fargo called upon the
"President of the Metropolitan Bank, on or about August 4, 1896,
"for the purpose of borrowing $10,000, for the benefit of himself
"and his brothers, and for their private use, and that at this interview
"view he explained to said President that the Fargo Company was
"about to fail, and that all the transactions had by Charles E.
"Fargo with said Bank in relation to said proposed loan of
23 "$10,000 were had in contemplation of the immediate failure
of the Fargo Company."

Twelfth. The Circuit Court erred in overruling the exceptions filed by said intervening petitioners to the report of Henry W. Bishop, Master of Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master finds that the Metropolitan National Bank
"did not know of the change in the Board of Directors or of the
"by-laws of Fargo Company at the time it completed the arrange-
"ment for the loan of $10,000, and the procuring of security for
"its claim against the Fargo Company,

"Whereas the Master should have found that the Metropolitan
"Bank first obtained the two judgment notes for $25,000 each
"and the agreement by which it was to share and pro rate with the
"Rubber Companies in the securities they held, before it paid the
"$10,000 over to Charles E. Fargo, and that said $10,000 were so
"paid, with full knowledge on the part of the Bank concerning the
"January arrangement made with the Rubber Companies, and was
"not in fact, paid over to the Fargos until all the arrangements
"had on August 4, 5 and 6, as shown by the resolutions of the

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Fargo Company and the acts of its officers, had been consummated."

Thirteenth. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master finds that the Metropolitan National Bank "is not shown to have been guilty of any actual fraud as against "complainant and the other creditors of the Fargo Company "by reason of any of its transactions with the Fargo Company or the Rubber Companies;

"Whereas the Master should have found that said Bank was guilty of actual fraud in connection with said transactions, and took its security for the purpose of hindering, delaying and defrauding the other creditors, and with knowledge of the intent with which the securities had been given to the Rubber Companies, and that the Fargos would appropriate the $10,000 loaned to them, to their own sole use and benefit, and place the same beyond the reach of the creditors of the Fargo Company."

Fourteenth. The Circuit Court erred in overruling the exception filed by said entervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master fails to find that owing to the dealings of the Fargo Company and said Rubber Companies in connection with the rubber goods so on hand and in the possession of the Fargo Company on January 2nd and 6th, 1896, said rubber goods were, as between the Forgo Company and its creditors, in fact, the property of the Fargo Company;

"Whereas the Master should have so found."

Fifteenth. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master fails to find that by reason of the secrecy by which said January arrangement was kept from the knowledge of the public and the Fargo Company's creditors, and by reason of the fact that the business of the Fargo Company was ostensibly carried on as above set forth, by the Fargos, the Fargo Company, between January 6, 1896, and August 6, 1896, was enabled to, and did in fact preserve its credit, and was enabled to, and did in fact purchase and obtain large quantities of merchandise and material on credit, and borrowed large sums of money from a large number of persons, firms and corporations, and had never

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"paid for the greater part thereof, which part so remaining whol
"unpaid, amounts to the sum of over $172,000, and the Farg
"Company still owes for the same to such firms, persons and co
"porations;

"Whereas the Master should have so found."

Sixteenth. The Circuit Court erred in overruling the exceptio filed by said intervening petitioners to the report of Henry W Bishop, Master in Chancery, filed in said cause on April 17, A. D 1899, which reads as follows:

"For that the Master fails to find that the persons, firms an "corporations from whom the Fargo Company purchased goods "credit and borrowed money between January 6th, 1896, and Au "gust 6th, 1896, as set forth in the preceding exceptions, woul "not, nor would any of them, have sold the Fargo Company an "goods, or loaned them any money after January 6th, 1896, ha "they known of said January arrangement, or had they know "that five of the directors and the secretary and treasurer of th "Fargo Company were the agents of, and controlled by said Rub "ber Companies.

"Whereas the Master should have so found."

Seventeenth. The Circuit Court erred in overruling the ex
26 ception filed by said intervening petitioners to the report o Henry W. Bishop, Master in Chancery, filed in said cause o April 17, A. D. 1899, which reads as follows:

"For that the Master fails to find that the deed of conveyance o "the factory plant at Dixon made by the Fargo Company to th "Bank, was accepted by the Bank in full payment of the sum o "$25,000, part and parcel of the indebtedness of said Fargo Com "pany to the Bank, and that by the execution, delivery and accept "ance of said deed, the indebtedness of said Fargo Company to "said Bank was reduced by at least said $25,000.

"Whereas the Master should have so found."

Seventeenth A. The Circuit Court erred in overruling the ex ception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master fails to find that on or about August 6 "1896, there remained on hand in the possession and control of the "Fargo Company in its place of business in Chicago, Illinois, a large "amount of rubber boots and shoes and other rubber goods, of the "value of at least $100,000, which had been theretofore shipped "to the Eargo Company by the United States Rubber Company "and that after the levies had been made under the executions in "favor of said Rubber Companies, as set forth in the bill of com-

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"plaint, said United States Rubber Company seized and took "all of said rubber goods out of the said place of business and "removed the same from the State of Illinois, and appropriated the same to its own use, and that such appropriation constitutes an illegal preference and is void, and said Company should account for the same to the present creditors of the Fargo Company.

"Whereas the Master should have so found."

Eighteenth. The Circuit Court erred in approving, ratifying and confirming said master's report filed in said cause on April 17, 1899, so far as the same was inconsistent with the exceptions and each of them, filed by said the intervening petitioners, and each of them, in this, that the master should have found that the United States Rubber Company, L. Candee & Company and the Metropolitan National Bank, and each of them, were guilty of fraudulent and inequitable conduct, which resulted in direct loss and injury to the creditors who gave credit to the Fargo Company after January 6, 1896, and that the Metropolitan National Bank, in conjunction with the United States Rubber Company and L. Candee & Company, was guilty of attempting to place a part of the property and assets of the C. H. Fargo Co. beyond the reach of its bona fide creditors, on or about August 6, 1896, in turning over to Charles E. Fargo and his brothers $10,000 and incorporating that amount in its judgment note against C. H. Fargo & Co. and in entering judgment upon their respective judgment notes at that time, and having an assignment of the outstanding accounts made and taking possession of all the property and assets of C. H. Fargo & Co.

Nineteenth. The Circuit Court erred in decreeing that the judgment entered in this court on the sixth day of August, 1896, against C. H. Fargo & Co. in favor of the defendant, the United States Rubber Company, for $145,400; the judgment entered in this court on the sixth day of August, 1896, against C. H. Fargo & Co. in favor of L. Candee & Company for the sum of $38,300; the judgment entered in the Circuit Court of Cook County, Illinois, on the sixth day of August, 1896, against C. H. Fargo & Co. in favor of the Metropolitan National Bank of Chicago; the warranty deed, dated August sixth, 1896, executed by C. H. Fargo & Co. to the Metropolitan National Bank of Chicago, conveying real estate in the City of Dixon, Lee County, Illinois, as set forth in the bill of complaint herein, and the assignment executed August sixth, 1896, by C. H. Fargo & Co. to the defendant, the United States Rubber Company, of all the book accounts, credits, choses in action and bills receivable of said C. H. Fargo & Co. were not at the time believed by the parties to be fraudulent in law, but on the contrary believed to have been within their rights.

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Twentieth. The Circuit Court erred in not decreeing that t judgment entered in this court on the sixth day of August, 18 against C. H. Fargo & Co. in favor of the defendant, the Unit States Rubber Company, for $145 400; the judgment eater
29 in this court on the sixth day of August, 1896, against C. H Fargo & Co. in favor of L. Candee & Company for the sum $38,300, the judgment entered in the Circuit Court of Co County, Illinois, on the sixth day of August, 1896, against C. H Fargo & Co. in favor of the Metropolitan National Bank of Chicag the warranty deed dated August sixth, 1896, executed by C. H Fargo & Co., to the Metropolitan National Bank of Chicago, co vey ing real estate in the City of Dixon, Lee County, Illinois, as s forth in the bill of complaint herein, and the assignment execute August sixth, 1896, by C. H. Fargo & Co., to the defendant, t United States Rubber Company, of all the book accounts, credit choses in action and bills receivable of said C. H. Fargo & Co were, and each of them was fraudulent in fact as against the clai and demands against C. H. Fargo & Co. of the complainant and the said the intervening petitioners, and each of them, and t other creditors of C. H. Fargo & Co. who have filed their cla herein, which arose after January 9th, 1896.

Twenty-first. The Circuit Court erred in finding that at the ti of the appointment of the receiver herein, there was due from H. Fargo & Co. to the United States Rubber Company the sum $142,424.81, said sum having been arrived at by adding interest the amount due from C. H. Fargo & Co. to the United Stat Rubber Company from August 6, 1896, to the time of the trial this cause, to which item or interest said United States Rub Company is not entitled.

30 Twenty-second. Ths Circuit Court erred in finding that the time of the appointment of a receiver herein, there w due from C. H. Fargo & Co. to L. Candee & Company the sum $36,530, said sum having been arrived at by adding interest on t amount due from C. H. Fargo & Co. to L. Candee & Compan from August 6th, 1896, to the time of the trial of this cause, which item of interest L. Candee & Company is not entitled.

Twenty-third. The Circuit Court erred in finding that at t time of the appointment of the receiver herein, there was due fr C. H. Fargo & Co. to the Metropolitan National Bank of Chica the sum of $50,000, because said sum of $50,000 includes the s of $10,000 which was fraudulently turned over by the Metropolit National Bank to C. H. Fargo and his brothers for their own pe sonal uses, on or about August 6th, 1896, and was not a bona fi loan to C. H. Fargo & Co. And because the further sum of $25,

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of said total sum of $50,000 was paid, satisfied and discharged August 6th, 1896, by the execution and delivery by C. H. Fargo Co. to the Metropolitan National Bank of the conveyance of real state in the City of Dixon, mentioned in the decree, and the note idencing said sum of $25,000 was then and there cancelled and rrendered to C. H. Fargo & Co. by said bank.

Twenty-fourth. The Circuit Court erred in decreeing that any f the moneys in the hands of the receiver appointed in this cause, realized or to be realized from the assets of C. H. Fargo & Co. should be paid to the United States Rubber Company, L. Candee & Company, or the Metropolitan National Bank of hicago, or to any or either of them, or that they, or either or any f them should share or participate therein, or in any part thereof.

Twenty-fifth. The Circuit Court erred in not decreeing that the eiver appointed herein, after paying the Master's fees fixed erein at the sum of $1500, and the proper disbursements in the ourse of the administration, including the proper allowance for eiver's and solicitors' fees, to be hereafter determined, should y all the remaining money in his hands realized from the assets C. H. Fargo & Co. to the creditors named in said decree, other an the United States Rubber Company, L. Candee & Company d the Metropolitan National Bank of Chicago, pro rata, according the amounts of their respective claims against C. H. Fargo & o. as specified in said decree.

Twenty-sixth. The Circuit Court erred in not decreeing that the nited States Rubber Company, L. Candee & Company and the etropolitan National Bank of Chicago should not, nor should ther of them, be paid any portion of the moneys in the hands of e receiver appointed herein, realized, or to be realized from the sets of C. H. Fargo & Co. until the claims against said C. H. argo & Co. of the other creditors mentioned in said decree, should first have been paid.

Twenty-seventh. The Court erred in not decreeing that the United States Rubber Company and L. Candee & Company hould be postponed in the distribution of the funds and assets in e hands of the receiver appointed herein until the respective aims against C. H. Fargo & Co. of the intervening petitioners, as ecified in said decree, had been paid in full.

Twenty-eighth. The Court erred in not decreeing that the Metpolitan National Bank of Chicago should be postponed in the disibution of the funds and assets in the hands of the receiver apointed herein, until the respective claims against C. H. Fargo & o. of the above named intervening petitioners, as specified in said ecree, had been paid in full.

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Twenty-ninth. The Circuit Court erred in not decreeing that the United States Rubber Company and L. Candee & Company were guilty of actual fraud in procuring the entry of the judgment entered in this court on the 6th day of August, A. D. 1896, against C. H. Fargo & Co., in favor of the defendant, the United States Rubber Company, for $145,400 and the judgment entered in this court on the 6th day of August, 1896, against C. H. Fargo & Co. in favor of the defendant L. Candee & Company, for the sum of $38,300 and the execution of the assignment on August 6, 1896, by C. H. Fargo & Co. to the defendant, the United States Rubber Company, of all the book accounts, credits, choses in action and bills receivable of said C. H. Fargo & Co.

Thirtieth. The Circuit Court erred in not decreeing that the Metropolitan National Bank of Chicago was guilty of actual
33 fraud in procuring the entry of the judgment entered in the Circuit Court of Cook County, Illinois, on the 6th day of August, 1896, against C. H. Fargo & Co. in favor of the Metropolitan National Bank of Chicago, and the execution of the warranty deed dated August 6, 1896, to said Bank, conveying the real estate in the City of Dixon, Lee County, Illinois, as set forth in said bill of complaint.

Thirty-first. The Circuit Court erred in decreeing that the defendant, the Metropolitan National Bank of Chicago, should reconvey to the receiver appointed in this cause, the real estate in the City of Dixon, Lee County, Illinois, described in the warranty deed dated August sixth, 1896, and executed by C. H. Fargo & Co. to said Bank.

Thirty-second. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

" For that the Master fails to find that by reason of the control
" which said Rubber Companies exerted over the Fargo Company
" by means of said January arrangement, said Rubber Companies
" from and after January 9, 1896, constituted substantially the
" Fargo Company, and that the goods, wares and merchandise so
" purchased by the Fargo Company from and after January 9,
" 1896, were in substance and in fact, purchased by said Rubber
" Companies;
34 " Whereas the Master should have so found."

Thirty-third. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

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"For that the Master fails to find that the arrangements entered into and transactions had and done by and between the Bank, Charles E. Fargo, the Fargo Company and the Rubber Companies, on or about August 5, 1896, in relation to the $10,000 turned over by the Bank to the Fargos for their own use, and the taking of the Bank into the scheme of security created by the January arrangement, and the agreements between the Bank and the Rubber Companies to share in the proceeds of the assets of the Fargo Company in proportion to their respective claims, and fixing the Bank's claim at $50,000, constituted an actual fraud upon the general creditors of the Fargo Company;

"Whereas the Master should have so found."

Thirty-fourth. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master fails to find that the formation of the January arrangement in itself, and the operation of the Fargo Company and the Rubber Companies thereunder were an actual fraud

"on the persons, firms and corporations which sold merchandise

"or loaned money to the Fargo Company from and after Jan-

"uary 6, 1896, and whose claims, or any part thereof, for such merchandise and loans, have not been paid, irrespective of the transactions and arrangements entered into and done by and between the Rubber Companies, Charles E. Fargo, the Fargo Company and the Metropolitan Bank in August, 1896;

"Whereas the Master should have so found."

Thirty-fifth. The Circuit Court erred in overruling the exception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master fails to find that the Rubber Companies at first refused to make any loan or advance to the Fargo Company, and demanded that the Fargo Company should prefer the Rubber Companies to the exclusion of all other creditors, which the Fargo Company refused to do, and stated that if the Rubber Companies refused to advance the $50,000 the Fargo Company would make an assignment and treat all of its creditors on an equality, and that thereupon the Rubber Companies, in order to prevent the Fargo Company from doing this, consented to make the $50,000 advance, on condition that the January arrangement would be carried out;

"Whereas the master should have so found."

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Thirty-sixth. The Circuit Court erred in overruling the ex-
36 ception filed by said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"For that the Master fails to find that from and after January
"2, 1896, the Rubber Companies, if they did not then know, could
"easily have ascertained the true facts as to the financial condition
"of the Fargo Company, and it was their duty so to do, and that
"their failure, or refusal so to do, under the circumstances shown
"by the evidence, constitutes negligence so gross as to amount to
"actual fraud upon the subsequent creditors of the Fargo Com-
"pany;

"Whereas the Master should have so found."

And the said intervening petitioners above named, and each of them, say that in the record of the proceedings aforesaid, there is manifest error, as above alleged, and pray that the said order and decree of said Circuit Court as entered herein on the said fourth day of May, A. D. 1899, may be reversed, corrected and modified in respect to the matters in which the same are erroneous, as above alleged.

United States Leather Company,
By Ashcraft & Gordon,
Its Solicitors.

Lambeau Leather Company,
By Newman, Northrup & Levinson,
Its Solicitors.

The Barber Bros. Company.
Boston Blacking Co.
Bulletin & Good Roads.
Carson, Pirie Monthly Co.
37 Carver Cotton Gin Co.
Calvert Lithographing & Engraving Co.
B. E. Cole & Co.
Coburn, Fuller & Co.
Consumer's Box Manufacturing Co.
The Continent Shoe Company.
Crooks Root & Co.
Cycling Gazette.
Easton Boot & Shoe Company.
Estabrook, Anderson Shoe Co.
Farnsworth, Hoyt & Co.
I. P. Farnum.
C. C. Farwell & Co.
P. A. Field & Co.

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Fletcher Mfg. Co.
A. F. Gallum & Sons.
H. M. George & Co.
Goldsmith, Rosenbush & Levie.
Goodyear Rubber Co.
The R. J. Gunning Co.
M. L. Hiller & Sons
A. J. Marcus & Co.
J. & H. Mayer
H. Michaels & Co.
Milwaukee Tack Co.
W. J. McBride
Phable Shoe Co.
Rouse, Maniere, Williams & Co.
Shattuck & Binger
A. W. Shaw & Co.
T. J. Shay & Co.
The Singer Manufacturing Company.
W. W. Spaulding
Spinney Virtue & Co.
Stowe, Bills & Hawley
Thilmany Pulp & Paper Mills
Tubular Rivet & Stud Company
University of Chicago Weekly.
George H. Van Pelt
Wachussetts Mills
Weir Bros. Paper Co.
Consolidated Hand Method Lasting Machine Co.
Hilliard & Merrill
Tripp Giant Leveller Co.
Dry Goods Reporter Co.
E. H. Van Ingen & Co.

By Newman, Northrup & Levinson,
their Solicitors.

Jacob Newman,
S. W. Northrup,
of Counsel.

(Endorsed) Filed May 12, 1899.

S. W. Burnham,
Clerk.

Assignment of errors of American Oak Leather Co. et al,. filed May 12 18 9.

38 And on, to-wit, the same day, the 12th day of May, 189 there was filed in the office of the Clerk of said court, the A signment of Errors of American Oak Leather Company, et al, the following words and figures, to-wit :—

39 United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,
In and for said District.

American Oak Leather Company,
vs.
C. H. Fargo & Co., United States Rubber Company, L. Candee & Company, Metropolitan National Bank of Chicago, et al. } In Chancery. No.

ASSIGNMENT OF ERRORS.

And now come American Oak Leather Company, complainant herein, and Pfister & Vogel Leather Company ; Thomas E. Wilder and John Wilder, co-partners as Wilder & Company ; and Eagle Tanning Works, intervening petitioners herein, and assign the following errors upon the order and decree of said Circuit Court entered herein on the fourth day of May, 1899, to wit :

First: The Circuit Court erred in denying on May 4th, 1899, the motion of the American Oak Leather Company to amend the original bill of complaint herein, by showing that the Dixon real estate conveyed by the Fargo Company to the Metropolitan National Bank had since the filing of the original bill been taken from said Bank by the action of other creditors of the Fargo Company, not parties to this record, by enforcing the liens which existed against the property prior to its transfer to the Bank ; and by striking out of the prayer for relief in the original bill the request that the
40 deed should be set aside and the Bank required to convey the property to the Receiver.

Second : The Circuit Court erred in overruling the exceptions and each of the exceptions, filed by the complainant, the American Oak Leather Company, and said the intervening petitioners above named, and each of them, to the report of Henry W. Bishop

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ster in Chancery, filed in the said cause on April 17th, A. D. 899.

ssignment of errors of American Oak Leather Co. et al., filed May 12, 1899.

Third: The Circuit Court erred in overruling the exception filed said complainant and said intervening petitioners to the report Henry W. Bishop, Master in Chancery, filed in said cause on ril 17, A. D. 1899, which reads as follows:

"Because the Master should have found that at the time that Fargo applied to Johnson on January 2, 1896, for assistance on behalf of the Fargo Company, he informed Johnson that the corporation could not pay its debts as they matured in the regular course of business, and that unless it received the assistance which he requested, it would be obliged to fail in business at that time because of its inability to pay its debts; that upon receiving this information, Mr. Johnson endeavored to induce Fargo to give the Rubber Companies security for all their claims, which Fargo refused to do, stating that if the assistance was not given as he requested so that his company was compelled to fail, then he would give no preferences to the Rubber Companies, but would treat all creditors alike."

Fourth: The Circuit Court erred in overruling the exception ed by said complainant and said intervening petitioners to the rt of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"Because the Master, in purporting to state the arrange-
"ment made between the Fargos and the Rubber Companies, with reference to the action of the new directors who were nominated by the counsel for the Rubber Companies, omits to state that it was specifically agreed and was an essential part of the plan, that these new directors were expected to act as might be necessary to guard and protect the interests of Johnson and of the two Rubber Companies under the agreement made between them, and in pursuance of the plan for securing the claims of the Rubber Companies and for preventing other creditors from obtaining any security which might in any wise injure or affect the security proposed to be given to the Rubber Companies."

Fifth: The Circuit Court erred in overruling the exception filed said complainant and said intervening petitioners to the report of enry W. Bishop, Master in Chancery, filed in said cause on April . A. D. 1899, which reads as follows:

"Because the Master has found that the change of the Board of Directors and the officers and the changes of the by-laws of the Fargo Company and the resolution authorizing the judgment notes and assignment of accounts were all for the purpose of giving preferential security to the Rubber Companies, and that the

Assignment of errors of American Oak Leather Co. et al., filed May 12, 1899.

" matter was kept secret in order to allow the Fargo Compan
" an opportunity of getting through embarassments apparent
" temporary, but not with a fraudulent intent as to the oth
" creditors of the Company, and that the only purpose of chan
" ing the Board of Directors and amending the by-laws was
" protect the Rubber Companies against the giving by the Far
" Company of preferential securities or judgment notes to oth
" creditors which should be superior to the security of the Rub
42 " Companies, whereas the Master should have found that
" change in the personnel of the Board of Directors and
" the by-laws of the company was made for the purpose of wi
" drawing from the officers of the company all power of giving
" any other creditor security for his debt and for the purpose
" preventing other creditors from collecting their claims until
" claims of the Rubber Companies were paid in full and that
" essential part of the plan on the part of both parties was that
" should be kept secret, because they all knew that Fargo & Co
" pany could not thereafter obtain goods on credit from any
" who had knowledge or suspicion of the arrangement, and th
" this secrecy was maintained for the purpose of enabling Fargo
" Co. to obtain goods on credit from persons with whom they we
" then about to deal."

Sixth: The Circuit Court erred in overruling the exception file by said complainant and said intervening petitioners to the repo of Henry W. Bishop, Master in Chancery, filed in said cause April 17, A. D. 1899, which reads as follows:

" Because the Master has found that the arrangement as ma
" between the Rubber Companies and the Fargo Company, w
" carried out in good faith by the parties, whereas he should hav
" found that the arrangement was not in good faith but was
" furtherance of a plan to hinder, delay and defraud other credi
" ors."

Seventh: The Circuit Court erred in overruling the exceptio filed by said complainant and said intervening petitioners to the re port of Henry W. Bishop, Master in Chancery, filed in said cau on April 17, A. D. 1899, which reads as follows:

" Because the Master finds that the Rubber Companies were in
" norance of the fact that on January 6, 1896, the assets of th
43 " company were insufficient to dischage its indebtedness, where
" he should have found both from the testimony of Johnso
" Sadler, Beale and the other witnesses in the case, that that was th
" first fact which was called to the attention of the Rubber Co
" panies and was placed before them as the reason why it was ne

Assignment of errors of American Oak Leather Co. et al., filed May 12, 1899.

essary that something should be done in order to prevent the Fargo Company from failing at that particular time."

Eighth: The Circuit Court erred in overruling the exception filed by said complainant and said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A D. 1899, which reads as follows:

"Because the Master finds that the indebtedness incurred by Fargo & Co. for goods purchased after January 6, 1896, which remained unpaid on August 6, 1896, was only $142,690.95, whereas he should have found that the amount of said liabilities remaining unpaid on August 6, 1896, was upwards of $183,000.00."

Ninth: The Circuit Court erred in overruling the exception filed by said complainant and said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"Because the Master finds that between January 6th and August 6th, 1896, the Fargo Company reduced its general indebtedness to a considerable extent, whereas there is no evidence before him justifying that finding."

Tenth: The Circuit Court erred in overruling the exception filed by said complainant and said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause on April 17, A. D. 1899, which reads as follows:

"Because the Master's finding that the advance of $50,000, "on January 6, 1896, and the giving of the judgment notes and security referred to, was the result of an evident feeling upon the part of all the parties to the transaction, and was in the belief and expectation on their part that through the assistance which was in this way afforded the Fargo Company, it would be enabled to continue its business successfully and become ultimately relieved of its financial embarrassments and that such arrangement was entered into in good faith and without any fraudulent intent, is not sustained by the evidence, the evidence showing on the contrary, that the whole arrangement of January 6, 1896, was entered into for the purpose of affording such security to the Rubber Companies which involved the hindering and delaying of the other creditors of the company and rendering it impossible for the other creditors of the company to obtain any security whatever for the indebtedness due them in case they applied for the same, or sought such security, and for the purpose of inducing persons to sell goods upon credit to the company in ignorance of the true situation, and by concealing such situation from them and with the express understanding that the then ma-

Assignment of errors of American Oak Leather Co. et al., filed May 12, 1899.

"turing notes of L. Candee & Co., aggregating $44,990.00 shoul
"be paid as they matured absolutely and unconditionally, and whic
"notes matured in January and the following February and March.

Eleventh: The Circuit Court erred in overruling the exceptio filed by said complainant and said intervening petitioners to th report of Henry W. Bishop, master in chancery, filed in said cau on April 17, A. D. 1899, which reads as follows:

"Because the master has found that the testimony does not sho
"that the parties were influenced in making the Januar
45 "arrangement, upon a belief of the insolvency of the Farg
"company at that time, and the conduct of the corporatio
"afterwards and until about the time of the entering up of th
"judgment notes, in the master's judgment, clearly indicated
"hope and expectation that the Fargo Company would be finall
"relieved of its troubles, whereas the testimony shows and th
"master should have found that the conduct of Johnson and th
"Rubber Companies in making the January arrangement, wa
"precisely what would have been done by them if they had know
"of the bankrupt condition of the Fargo Company at that time
"and the testimony shows that Johnson did know of the insolven
"condition of the Fargo Company at that time, and therefore in
"sisted upon the January arrangement as carried out, and thi
"knowledge furnished both the reason for the making of the ar
"rangement, and the method by which it was carried out, an
"included in the arrangement the probable contingency of the fina
"failure of the company by providing for the assignment of all it
"accounts, that Johnson did believe that the Fargo Company wa
"insolvent, is further evidenced by the new and additional precau
"tions taken to protect the interests of the Rubber Companies i
"the consigned goods and the proceeds."

Twelfth: The Circuit Court erred in overruling the exceptio filed by said complainant and said intervening petitioners to the re port of Henry W. Bishop, Master in Chancery, filed in said cau on April 17, A. D. 1899, which reads as follows:

"Because the Master finds that the general creditors of the com
"pany from whom goods were purchased between January an
"August, 1896, were substantialy the same as prior to that period
"whereas such finding is not justified by the evidence, and the evi
"dence shows that goods were purchased from a large number
46 "of new creditors, aside from those mentioned in this re
port."

Thirteenth: The Circuit Court erred in overruling the exceptio filed by said complainant and said intervening petitioners to the re

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ort of Henry W. Bishop, Master in Chancery, filed in said cause April 17, A. D. 1899, which reads as follows:

"Because the Master erroneously states in his report that on or about August 3rd, 1896, Charles E. Fargo stated to the President of the Metropolitan National Bank that his company would be obliged to fail unless it received some assistance, whereas the fact is, as shown by the evidence, that Charles E. Fargo called upon the President of the Metropolitan National Bank for the purpose of borrowing $10,000 for the benefit of himself and his brothers and for their private uses, according to the testimony: and the Master should have found that at this interview Fargo explained to Mr. Keith that his company was about to fail and his transactions with him with reference to the loan of $10,000, were in contemplation of its immediate failure."

Fourteenth: The Circuit Court erred in overruling the exception filed by said complainant and said intervening petitioners to the report of Henry W. Bishop, Master in Chancery, filed in said cause April 17, A. D. 1899, which reads as follows:

"Because the Master states that at the time of said interviews the said C. E. Fargo represented to the president of said Bank that the said C. H. Fargo & Co. was indebted to him and his brothers for money exceeding $10,000, which they had borrowed upon their notes for the benefit of the company and which "they had paid over to the company for use in its busi- "ness and that said Fargo brothers had put up some bank "stock that they owned as collateral to said notes; and C. E. Fargo thereupon proposed to said bank that if it would loan said C. H. Fargo & Co. $10,000 in addition to its then existing loan, so that said company could reimburse him and his brothers and enable them to take up said notes, he would procure from the said C. H. Fargo & Co. judgment notes for said bank, both for said sum so advanced as aforesaid, and also for notes then remaining due said bank to the amount of $40,000, whereas the Master should have found that Mr. Fargo told Mr. Keith that his company was about to fail; that the Rubber Companies held judgment notes for the amount of their claims and had held them since January; that he and his brothers, in view of the failure of the company, had to have some money for the private benefit of himself and his brothers, and that he wished to have an additional loan of $10,000 made on the company's paper for that purpose, stating that he thought the company owed it to him and his brothers, and that if the bank would advance this money to be used for this purpose, Fargo would obtain for the Bank the the same preferential security for the entire claim, including

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"$10,000, as the two Rubber Companies had already obtained
"and were about to enforce; that the president of the Bank a
"ceded to this request and loaned $10,000, with knowledge of th
" purpose for which it was intended to be used, and that the mone
" so obtained was thereupon divided between Charles E. Fargo an
" his two brothers."

Fifteenth: The Circuit Court erred in overruling the exceptio
filed by said complainant and said intervening petitioners to the re
port of Henry W. Bishop, Master in Chancery, filed in said cau
on April 17, A. D. 1899, which reads as follows:

48 "Because the Master erroneously finds that the Metro
" politan National Bank did not know of the change in th
" Board of Directors or of the by-laws of Fargo & Company
" the time it completed the arrangement for the loan of th
" $10,000, and the procuring of security for its claim again
" Fargo & Company, whereas he should have found that the Ban
" loaned said money and completed the transaction of obtainin
" security with full knowledge of those facts, and for the purpo
" of getting the same preferences before then given to the Rubb
" Companies."

Sixteenth: The Circuit Court erred in overruling the exceptio
filed by said complainant and said intervening petitioners to the re
port of Henry W. Bishop, Master in Chancery, filed in said cau
on April 17, A. D. 1899, which read as follows:

"Because the Master has found and stated that the Metropolita
" National Bank is not shown to have been guilty of any actu
" fraud as against complainant and the other creditors of the Farg
" Company by reason of any of its transactions with Fargo & Co
" or the Rubber Companies, whereas he should have found th
" said Bank was guilty of actual fraud in connection with su
" transactions, and took its security for the purpose of hinderin
" delaying and defrauding the other creditors and with knowled
" of the intent with which the securities had been given to th
" Rubber Companies."

Seventeenth: The Circuit Court erred in overruling the exce
tion filed by said complainant and said intervening petitioners to h
report of Henry W. Bishop, Master in Chancery, filed in said cau
on April 17, A D. 1899, which read as follows:

"Because the Master should have found that the $10,000, whi
" was advanced by the Metropolitan National Bank in Augus
49 " 1896, was procured by Fargo in the name of the corporation b
" for the personal use of himself and his brothers, and in vio
" of the fact that the corporation was unable to pay all its cre
" itors and was then about to fail, and that its property was to b

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mmediately seized under executions in favor of the Rubber Com-anies and in favor of the bank, both for its old indebtedness nd for the $10,000 thus added, and that all of these facts were known to the bank at the time it loaned its money and procured he judgment notes and the deed of the Dixon property, and were known also to the represen atives of the Rubber Com-anies at the time they took the assignment of the accounts nd entered judgment on their notes, and at the time they ade the agreement with the bank by which both parties agreed o unite their efforts in the enforcement of their respective laims."

Eighteenth: The Circuit Court erred in approving, ratifying nd confirming said Master's report filed in said cause on April 17, 9, so far as the same was inconsistent with the said exceptions each of them, filed by said complainant, the American Oak ather Company, and said the intervening petitioners, and each them, in this, that the Master should have found that the United tes Rubber Company, L. Candee & Company and the Metropolitan ional Bank, and each of them, were guilty of fraudulent and quitable conduct, which resulted in direct loss and injury to the editors who gave credit to the Fargo Company after January 6th, 6, and that the Metropolitan National Bank, in conjunction h the United States Rubber Company and L. Candee & Com-y, was guilty of attempting to place a part of the property and ets of the C. H. Fargo & Co. beyond the reach of its bona fide creditors on or about August 6th, 1896, in turning over to Charles E. Fargo and his brothers $10,000, and incorporating that amount in its judgment note against C. H. Fargo & Co. in entering judgment upon their respective judgment notes at t time, and having an assignment of the outstanding accounts le and taking possession of all the property and assets of C. H. rgo & Co.

Nineteenth: The Circuit Court erred in decreeing that the judg-nt entered in this court on the sixth day of August, 1896, inst C. H. Fargo & Co in favor of the defendant, the United tes Rubber Company, for $145,000, the judgment entered in this rt on the sixth day of August, 1896, against C. H. Fargo & Co. avor of L. Candee & Company for the sum of $38,300; the judg-nt entered in the Circuit Court of Cook County, Illinois, on the th day of August, 1896, against C. H. Fargo & Co. in favor of Metropolitan National Bank of Chicago; the warranty deed, ed August sixth, 1896, executed by C. H. Fargo & Co. to the tropolitan National Bank of Chicago, conveying real estate in the y of Dixon, Lee County, Illinois, as set forth in the bill of com-

Assignment of errors of American Oak Leather Co. et al., filed May 12 1899.

plaint herein, and the assignment executed August sixth, 1896, C. H. Fargo & Co. to the defendant, the United States Rubb Company, of all the book accounts, credits, choses in action a bills receivable of said C. H Fargo & Co., were not at the time lieved by the parties to be fraudulent in law, but on the contra believed to have been within their rights.

Twentieth: The Circuit Court erred in not decreeing that the jud ment entered in this court on the sixth day of August, 1896, again C. H. Fargo & Co. in favor of the defendant, the United Stat Rubber Company, for $145,400, the judgment entered in th
51 court on the sixth day of August, 1896, against C. H. Far & Co. in favor of L. Candee & Company for the sum of $3 300, the judgment entered in the Circuit Court of Cook Count Illinois, on the 6th day of August, 1896, against C. H Fargo & C in favor of the Metropolitan National Bank of Chicago; the wa ranty deed dated August sixth, 1896, executed by C. H. Fargo Co. to the Metropolitan National Bank of Chicago, co veying real estate in the City of Dixon, Lee County, Illinois, as forth in the bill of complaint herein, and the assignment e ecuted August sixth, 1896, by C. H. Fargo & Co. to the defe ant, the United States Rubber Company, of all the book accoun credits, choses in action and bills receivable of said C. H. Fargo Co., were, and each of them was fraudulent in fact as against t claims and demands against C. H. Fargo & Co. of the complain and of the said the intervening petitioners, and each of them, and t other creditors of C. H. Fargo & Co. who have filed the claims herein, which arose after January 9th, 1896.

Twenty-first: The Circuit Court erred in finding that at t time of the appointment of the Receiver herein, there was due fro C. H. Fargo & Co. to the United States Rubber Company the s of $142,424.81, said sum having been arrived at by adding inter on the amount due from C. H. Fargo & Co. to the United Stat Rubber Company, from August 6th, 1896, to the time of the tr of this cause, to which item of interest said United States Rub Company is not entitled.

Twenty-second: The Circuit Court erred in finding that at t time of the appointment of the receiver herein, there was due fro C. H. Fargo & Co. to L. Candee & Company the sum of $36,530 said sum having been arrived at by adding interest on the amou due from C. H. Fargo & Co. to L. Candee & Company, fro
52 August 6, 1896, to the time of the trial of this cause, to whi item of interest said L. Candee & Company is not entitle

Twenty-third: The Circuit Court erred in finding that at t time of the appointment of the receiver herein, there was due fro

Assignment of errors of American Oak Leather Co. et al., filed May 12, 1899.

H. Fargo & Co. to the Metropolitan National Bank of Chicago sum of $50,000, because said sum of $50,000 includes the sum $10,000, which was fraudulently turned over by the Metropolitan ational Bank to C. H. Fargo and his brothers, for their own per- al uses, on or about August 6, 1896, and was not a bona fide n to C. H. Fargo & Co. And because the further sum of $25,- , of said total sum of $50,000, was paid, satisfied and dis- arged on August 6, 1896, by the execution and delivery by C. Fargo & Co. to the Metropolitan National Bank, of the con- yance of real estate in the City of Dixon, mentioned in the de- e, and the note evidencing said sum of $25,000, was then and re cancelled and surrendered to C. H. Fargo & Co. by said nk.

Twenty-fourth: The Circuit Court erred in decreeing that any the money in the hands of the receiver appointed in this cause, lized or to be realized from the assets of C H. Fargo & Co. uld be paid to the United States Rubber Company, L. Candee & mpany or the Metropolitan National Bank of Chicago, or to any either of them, or that they, or either or any of them, should are or participate therein, or in any part thereof.

Twenty-fifth: The Circuit Court erred in not decreeing that e receiver appointed herein, after paying the Master's fees fixed rein at the sum of $1,500, and the proper disbursements in the rse of the administration, including the proper allowance for receiver's and solicitors' fees, to be hereafter determined, should pay all the remaining money in his hands realized from the assets of C. H. Fargo & Co. to the creditors named in said ree, other than the United States Rubber Company, L. Candee Company and the Metropolitan National Bank of Chicago, pro ta, according to the amounts of their respective claims against C. Fargo & Co. as specified in said decree.

Twenty-sixth: The Circuit Court erred in not decreeing that e United States Rubber Company, L. Candee & Company and the tropolitan National Bank of Chicago, should not, nor should ther of them be paid any portion of the moneys in the hands of e receiver appointed herein, realized, or to be realized from the sets of C. H. Fargo & Co. until the claims against said C. H. rgo & Co. of the other creditors mentioned in said decree, should st have been paid.

Twenty-seventh: The court erred in not decreeing that the ited States Rubber Company and L. Candee & Company should e postponed in the distribution of the funds and assets in the nds of the receiver appointed herein until the respective claims gainst C. H. Fargo & Co. of the above named complainant and

Assignment of Errors of American Oak Leather Co. et al., filed May 12, 1899.

the intervening petitioners, as specified in said decree, had be paid in full.

Twenty-eighth: The court erred in not decreeing that the Me ropolitan National Bank of Chicago should be postponed in the di tribution of the funds and assets in the hands of the receiver a pointed herein, until the respective claims against C. H. Fargo Co. of the above named complainant and the intervening petitio ers, as specified in said decree, had been paid in full.

Twenty-ninth: The Circuit Court erred in not decreeing th

54 the United States Rubber Company and L. Candee & Compan were guilty of actual fraud in procuring the entry of the judgme entered in this court on the 6th day of August, A. D. 1896, again C. H. Fargo & Co., in favor of the defendant, the United State Rubber Company, for $145,400, and the judgment entered in th court on the 6th day of August, 1896, against C. H. Fargo & C in favor of the defendant L. Candee & Company, for the sum $38,300, and the execution of the assignment on August 6, 189 by C. H. Fargo & Co., to the defendant, the United States Rubb Company, of all the book accounts, credits, choses in action a bills receivable of said C. H. Fargo & Co.

Thirtieth: The Circuit Court erred in not decreeing that th Metropolitan National Bank of Chicago was guilty of actual fra in procuring the entry of the judgment entered in the Circuit Cou of Cook County, Illinois, on the 6th day of August, 1896, again C. H. Fargo & Co. in favor of the Metropolitan National Bank Chicago, and the execution of the waranty deeds dated August 1896, to said Bank, conveying the real estate in the City of Dixo Lee County, Illinois, set forth in said bill of complaint.

Thirty-first: The Circuit Court erred in decreeing that the de fendant, the Metropolitan National Bank of Chicago, should reco vey to the receiver appointed in this cause, the real estate in th City of Dixon, Lee County, Illinois, described in the warranty dee dated August sixth, 1896, and executed by C. H. Fargo & Co. t said Bank.

And the said complainant and the intervening petitioners abo named, and each of them, say that in the record of the proceed

55 ings aforesaid, there is manifest error, as above alleged. an pray that said order and decree of said Circuit Court as entere herein on the said fourth day of May, 1899, may be reversed, cor rected and modified, in respect to the matters in which the sam are erroneous, as above alleged.

American Oak Leather Company,
By Smith, Helmer, Moulton & Price,
Its Solicitors.

Assignment of errors of American Oak Leather Co. et al., filed May 12, 1899.

Pfister & Vogel Leather Company,
By Tenney, McConnell, Coffeen & Harding,
Its Solicitors.

Thomas E. Wilder & John Wilder,
as co-partners as Wilder & Company.
By Wm. J. Manning,
Their Solicitor.

Eagle Tanning Works,
By Wm. J. Manning,
Its Solicitor.

Frederick A. Smith.
Samuel P. McConnell.
Horace Kent Tenney.
Wm. J. Manning.
Jacob Newman.
G. W. Northrup, Jr.
Newman, Northrup & Levinson,
Of Counsel.

(Endorsed) Filed, May 12, 1899.

S. W. Burnham,
Clerk.

And on the same day, to wit, the 12th day of May, 1899, in the May Adjourned Term of said Court, in the record of proceedings thereof, before the Honorable William J. Allen, District Judge, appears the following entry, to wit:

Order of May 12, 1899, allowing appeal.

United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES.

In and for said District.

Friday, May 12, 1899.

President, Hon. William J. Allen, District Judge.

American Oak Leather Company
vs.
C. H. Fargo & Co., United States Rubber Company, L. Candee & Company, Metropolitan National Bank of Chicago, et al } In Chancery. No.

The Court having on the fourth day of May, A. D. 1899, allowed the defendants herein, United States Rubber Company, L. Candee & Company, and the Metropolitan National Bank of Chicago, an appeal to the United States Circuit Court of Appeals for the Seventh Circuit from a certain decree entered herein on the fourth day of May, 1899, and said defendants having tendered an appeal bond in the matter of said appeal which was approved by the court, and having afterwards, on the fifth day of May, 1899, filed a transcript of the record and proceedings herein, duly certified by the Clerk of this Court, in the Clerk's office of the United States Circuit Court of Appeals, and the said American Oak Leather Com-
57 pany, complainant herein, and Pfister & Vogel Leather Company, Thomas E. Wilder and John Wilder, copartners as Wilder & Company, Eagle Tanning Works, United States Leather Company, Lambeau Leather Company, The Barber Bros. Company, Boston Blacking Company, Bulletin & Good Roads, Carson, Pirie Monthly Co., Carver Cotton Gin Co., Calvert Lithographing & Engraving Co., B. E. Cole & Co., Colburn Fuller & Co., Consumer's Box Manufacturing Co., The Continent Shoe Company, Crooks, Root & Co., Cycling Gazette, Easton Boot & Shoe Co., Estabrook, Anderson Shoe Co., Farnsworth, Hoyt & Co., I. P. Farnum, C. C. Farwell & Co., P. A. Field & Co., Fletcher Mfg. Co., A. F. Gallum & Sons, H. M. George & Co, Goldsmith, Rosenbush & Levie, Goodyear Rubber Co., The R. J. Gunning Co., M. L. Miller & Sons, A. J. Marcus & Co., J. & H.

Mayer, H. Michaels & Co., Milwaukee Tack Co., W. J. McBride, Flexible Shoe Co., Rouse, Maniere, Williams & Co., Shattuck & Singer, A. W. Shaw & Co., T. J. Shay & Co., The Singer Manufacturing Company, W. W. Spaulding, Spinney, Virtue & Co., Stowe, Bills & Hawley, Thilmany Pulp & Paper Mills, Tubular Rivet & Stud Company, University of Chicago Weekly, George H. Van Pelt, Wachusett Mills, Weir Bros. Paper Company, Consolidated Hand Method Lasting Machine Co., Hilliard & Merrill, Tripp Giant Leveller Co., Dry Goods Reporter Co. and E. H. Van Ingen & Co., intervening petitioners herein, having on this twelfth day of May, A. D. 1899, filed a petition herein praying for an appeal from said decree so entered on May fourth, A. D. 1899, together with assignments of errors, and tendered a good and sufficient appeal bond signed by said American Oak Leather Company as Principal, and with sufficient sureties, the Court orders that the said appeal prayed by said complainant and intervening petitioners above named be and the same is hereby allowed to them, and that said appeal bond heretofore tendered by them is hereby approved.

Order of May 12, 1899, allowing appeal.

And on the same day, to wit, the 12th day of May, 1899, there was filed in the office of the Clerk of said Court the Appeal Bond in the following words and figures, to wit:

Know all men by these presents that we, American Oak Leather Company as Principal, and Jacob Newman, F. A. Smith, Horace A. Tenney, as Sureties, are held and firmly bound unto the United States Rubber Company, L. Candee & Company, The Metropolitan National Bank of Chicago and C. H. Fargo & Co., in the full and just sum of One Thousand ($1,000.00) Dollars, to be paid to them, the said United States Rubber Company, L. Candee & Company, The Metropolitan National Bank of Chicago and C. H. Fargo & Co., their certain Attorneys, successors or assigns, to which payment well and truly to be made we bind ourselves, our successors, heirs, executors and administrators, jointly and severally by these presents.

Appeal bond, filed May 12, 1899.

Sealed with our seals and dated this twelfth day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

The condition of the above obligation is such that

Whereas, lately, at a term of the Circuit Court of the United States for the Northern District of Illinois, Northern Division thereof, in a suit depending in said Court, on the Chancery side thereof, wherein the American Oak Leather Company was complainant, and the Intervening Petitioners hereinafter named were Intervening Petitioners, and the said United States Rubber Company, L. Candee & Company, The Metropolitan National Bank of Chicago and C. H. Fargo & Co. were defendants, a decree was rendered on the Fourth (4th) day of May, A. D. 1899.

Appeal bond, filed May 12, 1899.

And whereas, the said American Oak Leather Company, Com plainant, and Pfister & Vogel Leather Company; Thomas E. Wilde and John Wilder, copartners as Wilder & Company; Eagle Tan ning Works; United States Leather Company; Lambeau Leathe Company; The Barber Bros. Company; Boston Blacking Co. Bulletin & Go d Roads; Carson Pirie Monthly Co., Carver Cotto Gin Co., Calvert Lithographing & Engraving Co., B. E. Cole Co., Colburn, Fuller & Co., Consumer's Box Manufacturing 59 Co.; The Continent Shoe Company; Crooks, Root & Co. Cycling Gazette; Easton Boot & Shoe Company; Estabrook Anderson Shoe Co.; Farnsworth, Hoyt & Co.; I. P. Farnum; C C. Farwell & Co.; P. A. Field & Co.; Fletcher Mfg. Co.; A. F Gallum & Sons; H. M. George & Co.; Goldsmith, Rosenbush & Levie; Goodyear Rubber Co.; The R. J. Gunning Co.; M. L Hiller & Sons; A. J. Marcus & Co.; J. & H. Mayer; H. Michael & Co.; Milwaukee Tack Co.; W. J. McBride; Pliable Shoe Co. Rouse, Maniere, Williams & Co.; Shattuck & Binger; A. W Shaw & Co.; T. J. Shay & Co.; The Singer Manufacturing Com pany; W. W. Spaulding; Spinney, Virtue & Co.; Stowe, Bills & Hawley; Thilmany Pulp & Paper Mills; Tubular Rivet & Stu Company; University of Chicago Weekly; George H. Vam Pelt Wachusetts Mills; Weir Bros. Paper Co.; Consolidated Hand Method Lasting Machine Co.; Hilliard & Merrill; Tripp Gian Leveller Co.; Dry Goods Reporter Co.; and E. H. Van Ingen & Co., Intervening Petitioners, have prayed for and obtained an order for an appeal from said decree to the United States Circuit Court of Appeals for the Seventh Circuit.

Now the condition of the above obligation is such that if the said American Oak Leather Company and said other Appellants above named shall prosecute their said appeal with effect, and answer all damages and costs if they shall fail to make good their appeall, then the above obligation to be void, otherwise to remain in fulll force and virtue.

American Oak Leather Company, (Seal)
By Smith, Helmer, Moulton and Price and
Newman, Northrup & Levinson,
Its Solicitors.

Jacob Newman. (Seal)
Frederick A. Smith. (Seal)
Horace K. Tenney. (Seal)

O. K. Isham, Lincoln & Beale.
Follansbee & Follansbee.

(Endorsed) Filed May 12, 1899.

S. W. Burnham,
Clerk.

And on the same day, to-wit, the 12th day of May, 1899, there was filed in the office of the Clerk of said Court the Stipulation waiving transcript of record and to hear both appeals together, in the following words and figures, to-wit:

Stipulation to waive transcript, etc., filed May 12, 1899.

United States of America,
Northern District of Illinois, } ss.
Northern Division.

IN THE CIRCUIT COURT OF THE UNITED STATES,
In and for said District.

American Oak Leather Company,
vs.
H. Fargo & Company, United States Rubber Company, L. Candee & Company, Metropolitan National Bank of Chicago, et al. } In Chancery. No.

It is stipulated by and between American Oak Leather Company, complainant herein, and Pfister & Vogel Leather Company, Thomas Wilder and John Wilder, copartners as Wilder & Company, Eagle Tanning Works, United States Leather Company, Lambeau Leather Company, The Barber Bros. Company, Boston Blacking Co., Bulletin & Good Roads, Carson, Pirie Monthly Co., Carver Cotton Gin Co., Calvert Lithographing & Engraving Co., B. E Cole & Co., Calburn, Fuller & Co., Consumer's Box Manufacturing Co., The Continent Shoe Company, Crooks, Root & Co., Cycling Gazette, Easton Boot & Shoe Company, Estabrook, Anderson Shoe Co., Farnsworth, Hoyt & Co., I. P. Farnum, C. C. Farwell & Co., P. A. Field & Co., Fletcher Mfg. Co., A. Gallum & Sons, H. M. George & Co., Goldsmith, Rosenbush & Levie, Goodyear Rubber Co., The R. J. Gunning Co., M. L. Hiller & Sons, A. J. Marcus & Co., J. & H. Mayer, H. Michaels & Co., Milwaukee Tack Co., W. J. McBride, Pliable Shoe Co., Rouse, Saniere, Williams & Co., Shattuck & Binger, A. W. Shaw & Co., E. J. Shay & Co., The Singer Manufacturing Company, W. W. Spaulding, Spinney, Virtue & Co., Stowe, Bills & Hawley, Thilany Pulp & Paper Mills, Tubular Rivet & Stud Company, University of Chicago Weekly, George H. Van Pelt, Wachuetts Mills, Weir Bros. Paper Co., Consolidated Hand Method Lasting

Stipulation to waive transcript, etc., filed May 12, 1899.

Machine Co., Hilliard & Merrill, Tripp Giant Leveller Co., D
Goods Reporter Co. and E. H. Van Ingen & C., intervening pe
tioners herein, and the United States Rubber Company, L. Cand
& Company and the Metropolitan National Bank of Chicago,
follows:

Whereas, this Court did, on the fourth day of May, 1899, all
said defendants the United States Rubber Company, L. Candee
Company and the Metropolitan National Bank of Chicago, an appe
to the United States Circuit Court of Appeals for the Seventh Circ
from the certain decree entered herein on the fourth day of Ma
1899, and afterwards, on the fifth day of May, A. D. 189

62 said defendants filed a transcript of the record and proceedin
herein, duly certified by the Clerk of this Court, in said Cou
of Appeals in the Seventh Circuit; and

Whereas, said complainant and the intervening petitioners abo
named have been heretofore, on the 12th day of May, 1899, al
allowed herein an appeal from the same order or decree from whi
said defendants above named have heretofore appealed as aforesai

It is hereby stipulated that it shall not be necessary for said co
plainant and the intervening petitioners above named to procure an
file in said United States Circuit Court of Appeals for said Seven
Circuit a full and complete transcript of all the record and proce
ings in this cause, in this court, but that the transcript of the reco
filed in said United States Circuit Court of Appeals on the fifth day
May, A. D. 1899, by the said defendants, the United States Rubb
Company, L. Candee & Company and the Metropolitan Nation
Bank of Chicago, on their said appeal to said court, heretofo
taken herein, may be used on said appeal taken herein by the sa
the above named complainant and the interving petitioners abo
named, appellants, on their procuring and filing in said Unit
States Circuit Court of Appeals a supplementary transcript

63 the record of this cause in this court, containing a true, corre
and complete transcript of the record of all proceedings had
this court herein since the certification by the Clerk of this Court
said transcript of the record and proceedings heretofore filed in sa
United States Circuit Court of Appeals on said appeal by the sa
United States Rubber Company, L. Candee & Company and th
Metropolitan National Bank of Chicago.

It is further stipulated that on the filing of said supplementar
record above mentioned in said United States Circuit Court of Ap
peals, said appeal by said complainant and said intervening pet
tioners above named shall be heard in said United Circuit Court
Appeals on said transcript so filed by the said United States Rubb
Company, L. Candee & Company and the Metropolitan Nation

Stipulation to waive transcript, etc., filed May 12, 1899

ak of Chicago, and said supplementary transcript so to be
d by said complainant and said intervening petitioners, in the
ne manner as if a full and complete transcript of the record
ein, showing all the proceedings in this cause in this court, had
en filed in said United States Circuit Court of Appeals by
d complainant and the said intervening petitioners above named,
d also that said appeal by said United States Rubber Company,
Candee & Company and the Metropolitan National Bank of
icago, and also said appeal by said complainant and said inter-
ing petitioners above named, shall be heard together in said
United States Circuit Court of Appeals.

Provided, that if any parts of said record have been omitted in said transcript so filed in said Circuit Court of Appeals, any ty hereto may file a transcript thereof if they see fit.

American Oak Leather Company,
By Smith, Helmer, Moulton & Price,
Its solicitors.

Pfister & Vogel Leather Company,
By Tenney, McConnell, Coffeen & Harding,
Its solicitors.

Thomas E. Wilder & John Wilder,
As copartners as Wilder & Company,
By Wm. J. Manning, Its solicitor.

Eagle Tanning Works,
By Wm. J. Manning, Its solicitor.

United States Leather Company,
By Ashcraft & Gordon, Its solicitor.

Lambeau Leather Company,
By Newman, Northup & Levinson,
Its solicitors.

W. Northrup,
ob Newman,
m. J. Manning,
ederick A. Smith,
muel P. McConnell,
race Kent Tenney.

The Barber Bros. Company,
Boston Blacking Co.,
Bulletin & Good Roads,
Carson-Pirie Monthly Co.,
Carver Cotton Gin Co.,
Calvert Lithographing & Engraving Co.,
B. E. Cole & Co.,
Colburn, Fuller & Co.,

Stipulation to waive transcript, etc., filed May 12, 1899.

Consumer's Box Manufacturing Co.,
The Continent Shoe Company,
Crooks, Root & Co.,
Cycling Gazette,
Easton Boot & Shoe Company,
Estabrook, Anderson Shoe Co.,
Farnsworth, Hoyt & Co.,
I. P. Farnam,
C. C. Farwell & Co.,
P. A. Field & Co.,
Fletcher Mfg. Co.,
A. F. Gallum & Sons,
H. M. George & Co.,
Goldsmith, Rosenbush & Levie,
Goodyear Rubber Co.,
The R. J. Gunning Co.,
H. L. Hiller & Sons,
A. J. Marcus & Co.,
J. & H. Mayer,
H. Michaels & Co.,
Milwaukee Tack Co.,
W. J. McBride,
Pliable Shoe Co.,
Rouse, Maniere, Williams & Co.,
Shattuck & Binger,
A. W. Shaw & Co.,
T. J. Shay & Co.,
The Singer Manufacturing Company,
W. W. Spaulding.
Spinney, Virtue & Co.
Stone, Bliss & Hawley.
Thilmany Pulp & Paper Mill.
Tubular Rivet & Stud Company.
University of Chicago Weekly.
George H. Van Pelt.
Wachusett Mills.
Weir Bros. Paper Co.
Consolidated Hand Method Lasting Machine Co
Hilliard & Merrell.
Tripp Giant Leveller Co.
Dry Goods Reporter Co., and
66 E. H. Van Ingen & Co.

By Newman Northrup & Levinson,
Their Solicitors.

United States Rubber Company and
L. Candee & Company,
By Isham, Lincoln & Beale and
Henry S. Robbins,
Their Solicitors.
Metropolitan National Bank of Chicago,
By Follansbee & Follansbee,
Its Solicitors.

(Endorsed) Filed May 12, 1899.
S. W. Burnham, Clerk.

Northern District of Illinois. }
Northern Division. } ss.

Clerk's certificate.

I, S. W. Burnham, clerk of the Circuit Court of the United States for the Northern District of Illinois do hereby certify the above and foregoing to be a true and complete transcript of the affidavit of Eldridge G. Keith filed in said court on the 7th day of October, 1896, in the cause pending in said court wherein the American Oak Leather Company is complainant and C. H. Fargo & Co., United States Rubber Company, L. C. Candee & Company and Metropolitan National Bank of Chicago are defendants, and also a true and complete transcript of all the proceedings had and papers filed in said cause since the certification by me on May 5, 1899, of the transcript of the record and proceedings in said cause heretofore filed in the United States Circuit Court of Appeals for the Seventh Circuit in the matter of appeal of said United States Rubber Company, L. Candee & Company and the Metropolitan National Bank of Chicago heretofore allowed in said cause, as the same appear from the original files of the records of said court, now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 15th day of May, A. D. 1899.

(Seal.)

S. W. Burnham,
Clerk.

Citation, filed May 12, 1899

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CITATION.

United States of America } ss.

THE PRESIDENT OF THE UNITED STATES, to the United States Rubber Company, L. Candee & Co., the Metropolitan National Bank of Chicago, and C. H. Fargo & Co.:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Milwaukee, in the State of Wisconsin, within thirty days from the date hereof, pursuant to an appeal by American Oak Leather Company, Pfister & Vogel Leather Company, Thomas E. Wilder and John Wilder, copartners as Wilder & Company; Eagle Tanning Works; United States Leather Company; Lambert Leather Company; The Barber Bros. Company; Boston Blacking Co., Bulletin & Good Roads; Carson, Pirie Monthly Co., Carver Cotton Gin Co., Calvert Lithographing & Engraving Co., B. E. Cole & Co., Colburn, Fuller & Co., Consumer's Box Manufacturing Co.; The Continent Shoe Company; Crooks, Root & Co.; Cycling Gazette; Easton Boot & Shoe Company; Estabrook, Anderson Shoe Co., Farnsworth, Hoyt & Co., I. P. Farnum, C. C. Farwell & Co., P. A. Field & Co., Fletcher Mf'g. Co.; A. F. Gallum & Sons; H. M. George & Co., Goldsmith, Rosenbush & Levie; Goodyear Rubber Co., The R. J. Gunning Co., M L. Hiller & Sons; A. J. Marcus & Co., J & H. Mayer; H. Michaels & Co., Milwaukee Tack Co., W. J. McBride; Pliable Shoe Co.; Rouse, Maniere Williams & Co., Shattuck & Binger; A. W. Shaw & Co., T. J. Shay & Co., The Singer Manufacturing Company; W. W. Spaulding; Spinney, Virtue & Co.; Stowe, Bills & Hawley; Thilmany pulp & Paper Mills; Tubular Rivet & Stud Company; University of Chicago Weekly; George H. Van Pelt; Wachusett Mills; Weir Bros. Paper Co.; Consolidated Hand Method Lasting Machine Co.; Hilliard & Merrill; Tripp Giant Leveller Co.; Dry Goods Reporter Co. and E. H. Van Ingen & Co.,

69 intervening petitioners, allowed in open court by the Circuit Court of the United States for the Northern District of Illinois, in a cause wherein said complainant and intervening petitioners above named are appellants, and you are appellees, to show cause, if any there be, why the order and decree entered by said Circuit Court and so appealed from, as shown by the petition for appeal filed by said complainant and intervening petitioners above named, and allowed in said Circuit Court, should not be corrected

d modified, and why speedy justice should not be done to the parties in that behalf. Citation, filed May 12, 1899.

Witness the Honorable William J. Allen, Circuit Judge of the id Circuit Court of the United States, this 12th day of May, in e year of our Lord one thousand eight hundred and ninety-nine.

WILLIAM J. ALLEN,
Judge.

We hereby accept service upon us of the foregoing petition this th day of May. A. D. 1899.

UNITED STATES RUBBER COMPANY, and
L. CANDEE & COMPANY.
By ISHAM, LINCOLN & BEALE and
HENRY S. ROBBINS,
Their Solicitors.

METROPOLITAN NATIONAL BANK OF CHICAGO,
By FOLLANSBEE & FOLLANSBEE,
Its Solicitors.

C. H. FARGO & CO.,
By CRATTY, JARVIS & CLEVELAND,
Its Solicitors.

(Endorsed) Filed May 12, 1899.

S. W. BURNHAM,
Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held at the United States court rooms in the City of Chicago, in said Seventh Circuit, Monday, the third day of October, 1898, in the October term the year of our Lord one thousand eight hundred and ninety-ht and of our Independence the one hundred and twenty-third.

And afterwards, to-wit: on the fourteenth day of February, 1899, the October term last aforesaid, the following proceedings were and entered of record, to-wit:

Tuesday, February 14, 1899.

Court met pursuant to adjournment.

Present:

Hon. William A. Woods, Circuit Judge.
Hon. James G. Jenkins, Circuit Judge.
Hon. Peter S. Grosscup, Circuit Judge.
Hon. William H. Seaman, District Judge.

ORDER

It is ordered by the court that William H. Seaman, Judge of the trict Court of the United States for the Eastern District of Wisnsin, be and he is hereby designated and assigned to sit in this urt as a member thereof during the present session. Thereupon d Seaman appeared and took his seat as a member of said court.

And afterwards, to-wit: On the fifth day of May, 1899, in the October term last aforesaid, came the appellants, The United tes Rubber Company, L. Candee and Company and the Metroolitan National Bank of Chicago, by their counsel, Mr. Edward S. ham, Mr. William G. Beale, Mr. Henry S. Robbins, Mr. Gilbert E. rter, Mr. George A. Follansbee and Mr. Mitchell D. Follansbee, and d their appearance in the office of the clerk of this court, said earance being in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

No. 598.—October Term, 1898.

United States Rubber Company, L. Candee & Company and the Metropolitan National Bank of Chicago,
vs.
The American Oak Leather Company et al.

The clerk will enter our appearance as Counsel for the Appellants.

EDWARD S. ISHAM,
WILLIAM G. BEALE,
HENRY S. ROBBINS,
GILBERT E. PORTER,
For Appellants United States Rubber Company and L. Candee & Company.

GEORGE A. FOLLANSBEE,
M. D. FOLLANSBEE,
For Appellants Metropolitan National Bank.

(Endorsed) Filed May 5, 1899.

EDWARD M. HOLLOWAY,
Clerk.

And afterwards, to-wit: on the eighth day of May, 1899, in the October Term last aforesaid, in the record of proceedings thereof in said entitled cause, appears the following entry, to-wit:

706 Monday, May 8, 1899.

Before: Hon. William A. Woods, Presiding Judge.

United States Rubber Company, L. Candee & Company and Metropolitan National Bank,
598. vs.
American Oak Leather Company et al.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

On motion of counsel for appellants, it is hereby ordered that

printed portions of the record used in the Circuit Court on the ring of the cause may be used by the Clerk of this Court in mak- up the printed copies of the transcript of record to be filed herein, vided said printed portions of the record used in the said Circuit urt conform or are made to conform to the rules of this court re- ting the printing of the transcript of the record.

And afterwards, to-wit: on the twelfth day of May, 1899, in the October Term last aforesaid, came the appellees, by their unsel, Mr. Edwin M. Ashcraft and Mr. Newton F. Gordon, and ed their appearance in the office of the clerk of this court, said pearance being in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

No. 598.—October Term, 1898.

United States Rubber Co. et al.,
Appellants,
vs.
The American Oak Leather Co. et al.

The Clerk will enter my appearance as Counsel for the Appellee.

E. M. ASHCRAFT.
NEWTON F. GORDON.

(Endorsed) Filed May 12, 1899.

EDWARD M. HOLLOWAY,
Clerk.

And afterwards, on the same day, to-wit: On the twelfth day of May, 1899, in the October term last aforesaid, came the appellees, by their counsel, Mr. Samuel P. McConnell and Mr. Horace Kent Tenney, and filed their appearance in the office of the clerk of this court, said appearance being in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

708 For the Seventh Circuit.

No. 598.—October Term, 1898.

United States Rubber Co. et al., Appellants,
vs.
The American Oak Leather Co. et al.

The Clerk will enter my appearance as Counsel for the Appellees.

SAMUEL P. McCONNELL.
HORACE KENT TENNEY.

(Endorsed) Filed May 12, 1899.

EDWARD M. HOLLOWAY, Clerk.

And afterwards, to-wit, on the thirteenth day of May, 1899, in the October term last aforesaid, came the Appellees, the Eagle Tanning Works and Thomas E. and John E. Wilder, co-partners as Wilder & Co., by their counsel, Mr. William J. Manning, and filed in the office of the clerk of this court his appearance, said appearance being in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

No. 598.—October Term, 1898.

United States Rubber Co. et al., Appellants,
vs.
The American Oak Leather Co. et al.

The Clerk will enter my appearance as Counsel for the Appellees Eagle Tanning Works and Thos. E. and John E. Wilder, co-partners as Wilder & Co.

WM. J. MANNING.

(Endorsed) Filed May 13, 1899.

EDWARD M. HOLLOWAY, Clerk.

And afterwards, to-wit: On the fifteenth day of May, 1899, in the October term last aforesaid, came the Appellees, by their counsel Jacob Newman and Mr. George W. Northrup, and filed in the office of the clerk of this court their appearance, said appearance being in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

No. 598.—October Term, 1898.

United States Rubber Co. et al., Appellants,
vs.
The American Oak Leather Co. et al.

The Clerk will enter my appearance as Counsel for the Appellees.

JACOB NEWMAN.
G. W. NORTHRUP.

(Endorsed) Filed May 15, 1899.

EDWARD M. HOLLOWAY, Clerk.

And afterwards, to-wit: On the nineteenth day of May, 1899, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Friday, May 19, 1899.

Before:
Hon. William A. Woods, Circuit Judge.
Hon. James G. Jenkins, Circuit Judge.
Hon. William H. Seaman, District Judge.

United States Rubber Company et al.
vs.
American Oak Leather Company et al.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Upon motion of Mr. Jacob Newman, counsel for appellees, it is ordered that cause No. 599, American Oak Leather Company et al. vs. United States Rubber Company et al. may be argued in connec-

tion with this cause and that only one brief may be filed by each par in both causes, and if so filed, they shall be filed on the date prescrib by the rules of this court in which briefs in this cause may be filed.

And afterwards, to-wit: On the sixth day of June, 1899, in t October term last aforesaid, the following further proceedings we had and entered of record, to-wit:

Tuesday, June 6, 899.

Before:

Hon. Henry B. Brown, Circuit Justice.
Hon. William A. Woods, Circuit Judge.
Hon. James G. Jenkins, Circuit Judge.

United States Rubber Company et al.
598 vs.
American Oak Leather Company et al.

Appeal from the Circuit Court of the United States for the Nort ern District of Illinois, Northern Division.

It is ordered by the court that this cause be, and the same is hereb set down for hearing June 9, 1899.

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711 And afterwards, to-wit: On the ninth day of June, 1899, i the October term last aforesaid, the following further proceed ings were had and entered of record, to-wit:

Friday, June 9, 1899.

Before:

Hon. Henry B. Brown, Circuit Justice.
Hon. William A. Woods, Circuit Judge.
Hon. James G. Jenkins, Circuit Judge.

United States Rubber Company et al.
598 vs.
American Oak Leather Company et al.

Appeal from the Circuit Court of the United States for the Nort ern District of Illinois, Northern Division.

Now this day come the parties by their counsel and this cause no comes on to be heard on the printed record and briefs of counsel an on oral arguments by Mr. Henry S. Robbins and Mr. George A. Fo

counsel for appellants, and by Mr. Jacob Newman and Mr. k A. Smith, counsel for appellees, and the court having he same, takes this matter under advisement.

nd on the fifteenth day of May, 1899, in the October term last resaid, came the appellants, by their counsel, Mr. Jacob New- r. Frederick A. Smith, Mr. William J. Manning, Mr. Samuel P. ell, Mr. Horace Kent Tenney and Mr. George W. Northrup, d in the office of the clerk of this court their appearance, which earance was in the words and figures following, to-wit:

NITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

No. 599.—October term, 1898.

can Oak Leather Company et al.,
vs.
States Rubber Co., L. Candee &
Metropolitan National Bank of
ago e al.

Clerk will enter our appearance as Counsel for the Appel-

JACOB NEWMAN.
FREDK. A. SMITH.
WM. J. MANNING.
SAMUEL P. McCONNELL.
HORACE KENT TENNEY.
GEORGE W. NORTHRUP, JR.

lorsed) Filed May 15, 1899.
EDWARD M. HOLLOWAY,
Clerk.

---

l afterwards, to wit: On the sixteenth day of May, 1899, in the r term last aforesaid, came the appellees, United States Rubber any and L. Candee & Co., by their counsel, Mr. Edward S. , Mr. Willi m G. Beale, Mr. Henry S. Robbins and Mr. Gilbert rter, and filed in the office of the clerk of this court, their appear- said appearance being in the words and figures following, to-

UNITED STATES CIRCUIT COURT OF APPEALS.

713 For the Seventh Circuit.

No. 599.—October Term, 1898.

American Oak Leather Co. et al.
Appellants,
vs.
United States Rubber Co. et al.

The clerk will enter my appearance as Counsel for the Appellees U. S. Rubber Co. and L. Candee & Co.

EDWARD S. ISHAM,
WILLIAM G. BEALE,
HENRY S. ROBBINS,
GILBERT E. PORTER,
Counsel for U. S. Rubber Co. and L. Candee & Co.

(Endorsed) Filed May 16, 1899.

EDWARD M. HOLLOWAY,
Clerk.

And afterwards, to-wit: on the same day, to-wit: On the sixteenth day of May, 1899, in the October Term last aforesaid, came the Appellants by their counsel, Mr. Frank A. Helmer, and entered his appearance in the office of the clerk of this court, said appearance being in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

No. 599.—October Term, 1898.

American Oak Leather Company et al.,
Appellants,
vs.
United States Rubber Company et al.

The clerk will enter my appearance as Counsel for the Appellants.

FRANK A. HELMER.

(Endorsed) Filed May 16, 1899.

EDWARD M. HOLLOWAY,
Clerk.

And afterwards, to-wit: On the eighteenth day of May, 1899, in the October Term last aforesaid, came one of the Appellees, the Metropolitan National Bank of Chicago, by its counsel, Mr. George A. Follansbee and Mr. Mitchell D. Follansbee, and filed their appearance in the office of the clerk of this court, said appearance being in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

No. 599.—October Term, 1899.

American Oak Leather Co. et al.,
Appellants,
vs.
United States Rubber Co. et al.

The clerk will enter our appearance as Counsel for the Appellee, the Metropolitan National Bank of Chicago.

GEORGE A. FOLLANSBEE.
MITCHELL D. FOLLANSBEE.

(Endorsed) Filed May 18, 1899.
EDWARD M. HOLLOWAY,
Clerk.

And afterwards, to-wit: On the nineteenth day of May, 1899, at the October term last aforesaid, came the American Oak Leather Company et al., by their counsel, Mr. Frederick A. Smith, Mr. Jacob Newman, Mr. S. P. McConnell, Mr. Horace K. Tenney, Mr. William Manning and Mr. George W. Northrup, Jr., and filed in the office of the clerk of this court a notice of motion and acceptance of same, said notice and acceptance being in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States Rubber Company et al., Appellants,
vs.
American Oak Leather Company et al., Appellees } Appeal from United States Circuit Court

American Oak Leather Company et al., Appellants,
vs.
United States Rubber Company et al., Appellees. } Appeal from United States Circuit Court

To Messrs. Edward S. Isham, William G. Beale, Henry S. Robbins, Gilbert E. Porter, George A. Follansbee and Mitchell D. Follansbee, of Counsel for the United States Rubber Company; L. Candee & Company and the Metropolitan National Bank of Chicago.:

Gentlemen: Please take notice that to-morrow, Friday, May 19th, 1899, at the opening of court, or as soon thereafter as counsel can be heard, or if the court be not sitting, then in chambers, we shall ask for an order that said appeals be heard together, on the record filed by you, and the supplemental record filed by us, in pursuance of a stipulation heretofore entered into in that regard, and for other appropriate orders in that connection which the court may deem advisable, at which time and place you may be present if you see fit.

Yours truly,

FREDERICK A. SMITH,
JACOB NEWMAN,
S. P. McCONNELL,
HORACE K. TENNEY,
WILLIAM J. MANNING and
GEORGE W. NORTHRUP, Jr.,
Of Counsel for American Oak Leather Co. et al.

Received copy of above notice this 18th day of May, A. D. 1899.

ISHAM, LINCOLN & BEALE.

GILBERT E. PORTER,
FOLLANSBEE & FOLLANSBEE.
HENRY S. ROBBINS.

(Endorsed) Filed May 19, 1899.

EDWARD M. HOLLOWAY,
Clerk.

And afterwards, to-wit: On the sixth day of June, 1899, in the October term last aforesaid, the following proceedings were had in above entitled cause and entered of record, to-wit:

Tuesday, June 6, 1899.

Before:
Hon. Henry B. Brown, Circuit Justice.
Hon. William A. Woods, Circuit Judge.
Hon. James G. Jenkins, Circuit Judge.

American Oak Leather Company et al.
vs.
United States Rubber Company et al.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

It is ordered by the court that this cause be, and the same is hereby set down for hearing June 9, 1899.

And afterwards, to-wit: On the ninth day of June, 1899, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Friday, October 9, 1899.

Before:
Hon. Henry B. Brown, Circuit Justice.
Hon. William A. Woods, Circuit Judge.
Hon. James G. Jenkins, Circuit Judge.

American Oak Leather Company et al.
vs.
United States Rubber Company et al.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Divison.

Now this day come the parties by their counsel, and this cause now comes on to be heard on the printed record and briefs of counsel, and on oral arguments by Mr. Jacob Newman and Mr. Frederick A. Smith, counsel for appellants, and by Mr. Henry S. Robbins and Mr. George A. Follansbee, counsel for appellees, and the court having heard the same takes this matter under advisement.

718 At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held at the United States Court rooms, in the City of Chicago in said Seventh Circuit, on Tuesday, October 3, 1899, in the October term, in the year of our Lord one thousand eight hundred and ninety-nine and of the Independence the one hundred and twenty-fourth.

And afterwards, to-wit: On the third day of October, 1899, in the October term last aforesaid, there was filed in the office of the clerk of this court the opinion of the court in the above entitled causes, said opinion being in the words and figures following, to-wit:

THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 598, 599.—June Session, 1899.

598.

ITED STATES RUBBER COMPANY, A CORPORATION, L. CANDEE & CO., A CORPORATION, AND METROPOLITAN NATIONAL BANK OF CHICAGO, A CORPORATION,

Appellants,

vs.

E AMERICAN OAK LEATHER COMPANY, W. J. McBRIDE, ESTABROOK-ANDERSON SHOE COMPANY, LAMBEAU LEATHER COMPANY, UNIVERSITY OF CHICAGO WEEKLY, CROOKS, ROOT & CO., THILMANY PULP & PAPER MILLS, THOMAS E. AND JOHN E. WILDER, UNITED STATES LEATHER COMPANY, PFISTER & VOGEL LEATHER COMPANY, EAGLE TANNING WORKS.

599. **Cross Appeal.**

MERICAN OAK LEATHER COMPANY, PFISTER & VOGEL LEATHER COMPANY, THOMAS E. WILDER AND JOHN WILDER, CO-PARTNERS AS WILDER & COMPANY, EAGLE TANNING WORKS, UNITED STATES LEATHER COMPANY, LAMBEAU LEATHER COMPANY, THE BARBER BROS. COMPANY, BOSTON BLACKING CO., BULLETIN & GOOD ROADS, CARSON-PIRIE MONTHLY CO., CARVER COTTON GIN CO., CALVERT LITHOGRAPHING & ENGRAVING CO., B. E. COLE & CO., COLBURN, FULLER & CO., CONSUMERS' BOX MANUFACTURING CO., THE CONTINENT SHOE COMPANY, CROOKS, ROOT & CO., CYCLING GAZETTE, EASTON BOOT & SHOE COMPANY, ESTABROOK-ANDERSON SHOE COMPANY, FARNSWORTH, HOYT & CO., I. P. FARNUM, C. C. FARWELL & CO., P. A. FIELD & CO., FLETCHER MF'G CO., A. F. GALLUM & SONS, H. M. GEORGE & CO., GOLDSMITH, ROSENBUSH & LEVIE, GOODYEAR RUBBER CO., THE R. J. GUNNING CO., M. L. HILLER & SONS, A. J. MARCUS & CO., J. & H. MAYER, H. MICHAELS & CO., MILWAUKEE TACK CO., W. J. McBRIDE, PLIABLE SHOE CO., ROUSE, MANIERE, WILLIAMS & CO., SHATTUCK & BINGER, A. W. SHAW & CO., T. J. SHAY & CO., THE SINGER MANUFACTURING CO., W. W. SPAULDING, SPINNEY, VIRTUE & CO., STOWE, BILLS & HAWLEY, THILMANY PULP & PAPER MILLS, TUBULAR RIVET & STUD COMPANY, UNIVERSITY OF CHICAGO WEEKLY, GEORGE H. VAN PELT, WACHUSETT MILLS, WEIR BROS. PAPER CO., CONSOLIDATED HAND METHOD LASTING MACHINE CO., HILLIARD & MERRILL, TRIPP GIANT LEVELLER CO., DRY GOODS REPORTER CO. AND E. H. VAN INGEN & CO.

vs.

NITED STATES RUBBER COMPANY, L. CANDEE & CO. THE METROPOLITAN NATIONAL BANK OF CHICAGO, AND C. H. FARGO & CO.

ppeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Before BROWN, *Circuit Justice*, and WOODS and JENKINS, *Circuit Judges.*

We have here an appeal and cross appeal. They are from a final rendered in conformity with the master's report of his con-

720 clusions on the evidence, and in accord with the theory of the
terlocutory order affirmed by this court in *United States*
ber Co. v. *Am. Oak Leather Co.* 53 U. S. App. 444, 27 C
A. 118. The defendants, the rubber companies and the Metro
itan National Bank, dispute that theory and insist that the pro
ences which they obtained were valid. The original complainan
and other creditors who intervened, have brought the cross ap
and insist that the fund in court should be applied to the discha
of their demands, and that in so far as the decree permits the
fendants to share in the fund it is erroneous. The character of
case, as now presented, is not deemed to be essentially differ
from what it was before, but a fuller statement of the facts is
sirable.

The corporation, C. H. Fargo & Co., successor to a partners
of the same name, was organized in 1889 to do a mercantile bu
ness in Chicago. In 1893 it became embarrassed, and being large
indebted to the rubber companies, the United States Rubber Co
bany of New Jersey and L. Candee & Company of Connecticut, a
to the Metropolitan National Bank of Chicago, and being compel
to yield to the demand of the latter for security, execu
judgment notes to the bank for $130,000 and to the rubber co
panies for sums aggregating $200,000, those companies not only
but accepting security because the bank exacted it. The Fa
company had an agreed line of credit with the bank to the amo
of $50,000, which was sometimes exceeded. The judgment no
given in 1893 were paid in part, from time to time, and before t
close of 1895 were surrendered and ordinary promissory no
taken for the unpaid balances. On December 30 or 31, 189
corporation being again unable to meet its maturing obligatio
sent telegraphic messages to the rubber companies, in respons
which Charles L. Johnson and Huston M. Sadler Jr., as represen
tives of those companies, which some months before had beco
one in interest, went to Chicago, arriving January 2, 1896, and
the evening of that day commenced with Charles E. Fargo negot
tions which on the 6th terminated in the agreement, the charact
of which is now the subject of dispute. In those negotiation
Johnson and Sadler were assisted and advised by the local coun
of the rubber companies, Mr. Wm. G. Beale, who was present
most of the interviews. At that time there was due from the Fa
company to L. Candee & Co. as evidenced by notes given in set
ment the preceding November, $44,900, to the United States Rub
Company on open account for the proceeds of sales of consigned goo
$141,537.13, to the Metropolitan Bank $50,000, and to other
$210,216.20—a total of $416,653.33. The value of the assets

that time was not definitely ascertained, but was represented by the Fargos to exceed largely the liabilities. In fact it was much

Johnson, on arrival, was told of the company's embarrassment was asked to have his companies make a loan of 00 to meet paper soon to mature. He refused the st and solicited security for what was owing to his com- s, urging that on account of what they had done in 1893 they entitled to preference over other creditors. That meant and understood to mean an immediate suspension of business, and refused by Charles Fargo, who insisted that a failure was not ssary, and that if they had to go to the wall they would treat editors alike. The negotiations then proceeded but without until January 6th, the whole effort for four days, so far as sed, being expended in the endeavor to devise a plan whereby rubber companies could be made absolutely secure and the go company be able to continue in business. The idea of put- the board of directors under control of the rubber companies hav- been suggested, and it having been determined that loan had better be $50,000, Johnson, acting for L. Candee Co. then proposed to lend the Fargo company $50,000 ix months, upon the understanding that the loan and the pre- s indebtedness for $44,900, and the debt due and to become to the United States Rubber Company "should be secured in way as might be satisfactory to their counsel, Mr. Beale." proposition was accepted on the same day, and, as the master's rt proceeds to say, "it was agreed and arranged between the ies as follows:

First: That the $50,000 should be advanced to the Fargo com- y by L. Candee & Co., partly on that date and during the suc- ding two weeks:

Second: That the Fargo company should that day execute and ver its three judgment notes, one for $45,000 payable on de- nd to the order of L. Candee & Company to secure that company h respect to its liability as endorser or guarantor upon the notes $44,900 given previous to January, 1896, one for $51,500 pay- e on demand to L. Candee & Company, as collateral security to ain notes of the Fargo company which were given as evidence of advance of $50,000 then to be made, and one for $140,000 payable demand to the order of the United States Rubber Company, as ateral security to the then existing and to any future indebted- ss of the Fargo company to the United States Rubber Company aforesaid.

Third: That in case the Fargo company should at any time find necessary to suspend business, it would assign as additional se-

722 curity all its accounts and bills receivable; that it should n
give any judgment notes to other creditors which would imp
the security to the Rubber companies, and that the $50,000 adva
should be used by the Fargo company in reduction of its gene
indebtedness as it matured; and

Fourth: That the four employees of the Fargo company w
were on the board of directors, and also E. A. Fargo, should ret
from the board and there should be elected in their places by t
stockholders of the company five persons, to be nominated by s
Beale, in whom he had confidence, one of whom should become s
retary and treasurer, and that the directors so to be elected
Beale's nomination should not hamper or interfere with the prop
carrying on of the ordinary business of the company."

On the same day a meeting of the board of directors of the Far
company as then and theretofore constituted was held, at which w
passed a resolution authorizing the borrowing of the $50,000 a
the giving of judgment notes therefor and for existing indebtedne
as stipulated; and accordingly three judgment notes "were execut
and delivered by Charles E. Fargo, President of the compan
Frank M. Fargo, Vice-President and Treasurer, and E. A. Farg
Secretary, and the loan of $50,000 was perfected, $10,000 being a
vanced at the time and the balance of the 50,000 during the s
ceeding two weeks." This action was ratified on the 8th day
January, 1896, by the unanimous vote of the stockholders of t
company, all the shares being represented. The three Fargos h
been for some time the owners of all the shares. An effort w
made to reduce to writing the understanding, but Charles Fargo
sisted upon terms to which Mr. Beale would not assent, and M
Johnson, who was on his way eastward, being informed of the si
ation, sent from Altoona, Pa., on January 7th, a telegram to M
Beale containing the following:

"Sadler has explained the situation to me. Think posit
should be made absolute as soon as possible, by completing arran
ment as arranged, and organization of directors to prevent giv
other judgment notes. . . . Failure thus to protect us, sho
result in executions by us. Use, at your discretion, all judgme
notes in your possession, in order to put our claim beyond per
venture."

This having been read to Mr. Fargo he consented to trust Joh
son in the matter without a written agreement.

At a meeting of the stockholders on January 9, 1896, George G
Madison, Tiffany Blake, Buell McKeever, Frederick B. Fuller, G
bert E. Porter, Charles E. Fargo and Frank M. Fargo were elect
directors for the ensuing year, all except the Fargos and Bla

being employes in the office of Beale, and Blake being assistant corporation counsel of the city of Chicago, of which Beale was n corporation counsel; and all except the Fargos were chosen at suggestion of Beale. At a meeting on the same day of the newly ted board Charles E. Fargo was reelected president of the com-, Frank M. Fargo vice-president, Buell McKeever was made retary and treasurer, and the by-laws of the company were so nded as to forbid the giving of judgment notes or preferential urity without special authorization from the board of directors. e change of the board of directors and officers, the change in the -laws, and the resolution authorizing the execution of judgment es and an assignment of accounts, the master reported, "were for the purpose of giving preferential security to the rubber panies, and the matter was kept secret in order to allow the rgo company an opportunity of getting through embarrassments parently temporary but not with a fraudulent intent as to the er creditors of the company." The report then proceeds: "The y purpose and object of changing the board of directors as afore-d and of amending the by-laws was to protect the rubber com-nies against the giving by the Fargo company of preferential urity or judgment notes to other creditors, which should be su-rior (or equal?) to the security of the rubber companies. . . . he arrangement as made was carried out in good faith by the par-s and the directors elected at the suggestion of said Beale took part in the active management of the Fargo company after their ction, and no stockholders' and directors' meetings of the Fargo mpany were held after January 9th, 1896, until August 5th, 896."

It further appears that between January 6 and August 6, 1896, ew liabilities were incurred by the Fargo company to creditors other than the rubber companies and the bank to the amount of $246,660.54, of which there was due and unpaid in August 6, 1896, $142,690.95, and during the same period the Fargo company paid to general creditors in the regular course of business more than $300,000, paying all of the indebtedness of January 6, 1896, which was largely to persons who are now creditors. Charles and Frank Fargo were personally liable upon portions of the debts of the company in January, and those portions were paid off before August. The original debt of $44,900 to the Candee company was paid and $13,470 on the loan of $50,000. To the United States Rubber Company as much as $15,000 was paid on old indebtedness, but additional consigned goods were sold to the amount of $24,534.04, of which the sum of $5,534.04 only was remitted, so that the sum due that company on August 6

724 was $142,424.81, and there was due to L. Candee & Co. $36,

All credit given to the Fargo company after January 9, exc by the rubber companies and $10,000 by the bank, was gi in ignorance of the execution of the judgment notes to t rubber companies, of the change of directors and offic and of the arrangement existing between the rubber co panies and the Fargo company. Of the liabilities so c tracted the amount still unpaid exceeds $110,000. Besi the mere ignorance of the facts reported by the master, the e dence shows that in order to obtain credit of the banks at Dix was represented in response to direct inquiry that the company h given no judgment notes, and to the representative of another cr itor, the Päster & Vogel Leather Company, seeking payment security, Charles E. Fargo, while denying that he had made direct statement that the company had given no judgment note admitted that in response to inquiry he had made evasive answ likely to produce, and which he intended to produce, that beli His testimony on the point presents an interesting picture of one w in all this transaction is credited with having had no wrongf purpose. About the last of July it became evident th a collapse was inevitable, and with that result in view Char Fargo, desiring money for the individual uses of himse and brothers, sought to obtain for the company fr the Metropolitan Bank, to which there was then owi $40,000 unsecured, an additional $10,000. His plan was to ha the bank admitted into the arrangement with the rubber compani and for the purpose of obtaining the consent of those companies went to New York. He obtained the desired consent, but, accor ing to the testimony of Mr. Sadler, without revealing the purp to cease business. Mr. Sadler returned with him or after a day two followed him to Chicago, but for what purpose is not disclose Though not admitted it is difficult to believe that he left Chica without knowledge of what was being and about to be done.

In respect to the coming of the bank into the arrangement wi the rubber companies the master found, among other things, "th C. H. Fargo represented to the president of the bank that C. H Fargo & Co. was indebted to him and his brothers for mon exceeding $10,000, which they had borrowed upon their notes f the benefit of the company and which they had paid over to t company for use in its business, and that said Fargo brothers h put up some bank stock that they owned as collateral to said note and C. E. Fargo thereupon proposed to said bank that if it would le said C. H. Fargo & Co. $10,000 in addition to its then existi loan, so that said company could reimburse him and his broth

and enable them to take up said notes, he would procure from the said C. H. Fargo & Co. judgment notes for said bank, both for said sum so advanced as aforesaid, and also for the notes then remaining due said bank to the amount of $40,000." Without a further rehearsal of details, it is sufficient to state that the bank was informed of the arrangement with the rubber companies, consented to join in it, advanced the additional $10,000, making its entire demand $50,000, received therefor two judgment notes for $25,000 each, accepted in immediate payment of one of them a conveyance by the Fargo company of its manufacturing establishment and plant at Dixon, and contemporaneously entered into an agreement with the rubber companies that each would account to the other, and divide all sums realized pro rata according to the amounts of their respective claims. The bank and the rubber companies proceeded at once to take judgments and to cause executions to be issued and levied. The accounts of the Fargo company were assigned to the rubber companies as stipulated, and were placed in the hands of Mr. Beale's firm for collection—an arrangement which was continued by order of the circuit court, and the amounts realized therefrom and from the disposition of the property by the marshal have been duly reported.

Exceptions were filed to the master's report by the American Oak Leather Company, and by that company jointly with the other complainants, all of which the court overruled. Errors are assigned by the rubber companies jointly, and separately by the Metropolitan National Bank and by the United States Rubber Company. The errors assigned on the cross appeal are directed to the rulings upon exceptions to the master's report as well as to the final decree.

WOODS, *Circuit Judge*, after stating the case, delivered the opinion of the court:

Questions of fraud in law and fraud in fact are in their natures separate, though not always distinguishable by clearly defined lines. In this case they have been presented separately in the briefs and in the argument at the bar of the court, but the facts bearing upon them are so commingled and to a large extent inseparable, that to avoid repetition no attempt will be made as we proceed to keep the distinction all the while in view.

There can be no doubt that the question of the validity of the preferences given to the rubber companies and to the bank should be determined by the law of Illinois where the attempt to give them was made. That law, it is also certain, authorizes judgment notes and permits the preferring of creditors by insolvent debtors, whether individual or corporate; and reference has been made to the de-

726 cisions in *Field* v. *Ridgeley*, 116 Ill. 424, *Hegeler* v. *First National Bank of Peru*, 129 Ill. 157 and *Haas* v. *Sternbach*, 156 44, for adjudications of the validity of preferences obtained by me of judgment notes which had been withheld from record "for f years," "for more than a year," and "for five years," while debtor continued in business, obtaining, as it was alleged, new cr which would have been refused if the existence of the judgment n had been known. In *Hegeler* v. *The Bank*, mortgage security had b offered by the debtor, but refused by the creditor "because would injure the credit of the glass company and prevent it fr obtaining credit elsewhere." The court in that case said:

"The argument proceeds throughout upon the proposition t the bank took its notes and held them under circumstances t made its conduct operate as a fraud upon others. There is no p tense that there was any agreement to conceal its claim against glass company; much less that any such agreement was made the purpose to enabling the company to obtain credit from oth No evidence can be found in the record proving, or tending prove, acts or declarations on the part of the appellee calculate induce appellant to give credit to the glass company. There nothing in the bill, and certainly nothing in the evidence, to s that at the time appellee took the notes, and refused to take m gage security, it did not honestly believe that, notwithstanding insolvency of the glass company, it would, if its credit could maintained, successfully recover from its embarrassment, conti business, and pay all its debts."

In *Haas* v. *Sternbach* a mortgage on real estate, kept off the ord at the request of the mortgagor with the view to an e sale of the property, was pronounced not fraudulent as aga creditors of the firm of which the mortgagor was a member; bu important distinction of that case, as well as of the preceding from the present was marked by the court when it said: "Th was no agreement or promise to keep the mortgage secret, but ply that it would not then be recorded; and there is an entire sence of proof that Charles Sternbach or his firm did or said thing, other than withholding the mortgage from record, w could have misled others as to its existence."

"Thus in Illinois it is clearly established law," say cou "that the maintenance of secrecy respecting a prefer without 'fraudulent intent as to other creditors,' does make the preference fraudulent"; and to reinforce proposition they cite *Sanford Fork & Tool Co.* v. *Howe*, 157 S. 312; *Sutton Mfg. Co.* v. *Hutchinson*, 24 U. S. App. 11 C. C. A. 320. Whatever may be thought of the legisla

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policy which permits the execution and long holding of unrecorded judgment notes, the decisions cited afford no precedent, direct or inferential, in justification of the scheme in question, the like of which, we believe, if ever conceived, never before was brought into effective operation. As a judicially sanctioned or commercially accepted possibility in business it is unbelievable. It could be attempted only by a corporate debtor, and its approval by the courts would afford a new and fruitful motive for the creation of corporations by the many who would be quick to avail themselves of a promising a method of pursuing hazardous enterprises at the risk of others.

"The maintenance of secrecy," to repeat the words chosen by counsel to express the scope of the decisions referred to, does not signify necessarily more than the fact of secrecy, begun and continued without previous agreement or purpose to maintain it; but secrecy kept for a specific purpose means much more. The master's finding on the point implies, and the evidence demonstrates, a mutual understanding between those concerned that secrecy was necessary, and an express agreement that it should be kept would not have made the understanding more clear or its fulfillment more imperative. During the negotiations the suggestion of a chattel mortgage was advanced but promptly rejected, because without the publicity of recording the security would be invalid against other creditors. The scheme adopted, which, if upheld, though not constituting a recognized form of lien would be a better security than a chattel mortgage, was accepted not only because it made secrecy possible but because it made exposure impossible, if those employed to execute it kept faith; and that every one of them understood or was able to understand, that once the scheme was on foot his chief responsibility would be to maintain a discreet silence, the proof is clear, and there has been no attempt or apparent disposition to deny. Returning to the language of the report: "The matter was kept secret in order to allow"—that is to say, for the purpose of allowing — "the Fargo company an opportunity of getting through embarrassments apparently temporary"; and that of course, and avowedly, they were to do, or to try to do, by continuing the business under a plan which without secrecy was known to be impossible, and by which the risks of the business were shifted wholly upon those who, not suspecting the situation, should give undeserved credit. Secrecy kept for a purpose is not accidental or unintended. It is premeditated; it is in essence the same as if agreed upon; and the color imparted by it to this transaction, when all the circumstances are considered, is not removed by the added

728 words of the finding, "but not with a fraudulent intent as to
other creditors of the company." Read strictly that part of
finding is not broad enough to include subsequent creditors, a
whom the scheme was so plainly wrongful that Charles Fargo, w
is credited with having suggested the making of the change in
directory of his company, after a while became unwilling to pur
it further by seeking renewals of the company's notes in bank.
however, the master intended, as it seems probable he did inte
to find that the parties to the scheme had no conscious purpose
harm either present or future creditors, the finding cannot abro
or restrict the application of that familiar rule, without which
coherent code of law or morals would be impossible, that men shall
deemed to intend the natural and probable consequences of the
acts or conduct. What did these people intend "as to other cr
itors"? Plainly that they should remain or become creditors wi
out security or the possibility of obtaining it and be at the mer
of themselves, who by a secret control of the corporation were to
able at any hour to close its doors and appropriate all its prope
to the payment of their own demands. There is a pertinent pass
in the testimony of Mr. Beale: After explaining that he had p
sonally cautioned Charles Fargo against being too hopeful, be
inclined to branch out, and possibly having too much time to
fishing, and telling him that "he was all right if they handled th
business as it ought to be handled," he added: "They had start
with a big business and ought to be able to carry it along ev
through these hard times, but I was particularly desirous th
through any strong temptation he should not put the Metropolit
bank in a position where it could claim to have been deceived.
do not think that the idea of other creditors, merchandise credito
or their position, entered the mind of either Mr. Johnson or M
Sadler or myself during the entire transaction; we were thinki
of the Metropolitan bank and were anxious to see that that indebt
ness should not increase after we made the arrangement, and th
subject—reference to the Metropolitan bank—formed the subject
some conversation between Mr. Johnson and myself, and I distinct
remember at one of the interviews at the Auditorium Annex say
that Fargo after that must not go to the Metropolit
bank to borrow additional money. We had in mind that h
would not need to increase the credits after getting this $50,0
from the rubber companies." One creditor, at least, was impo
tant enough to be thought of and talked of, and to be the object
solicitous care that "through any strong temptation" Fargo sh
not put it in a position where "it could claim to have been d
ceived." What stronger condemnation could there be of t

eme, or better proof that its essential character was appre-
ded (though unconsciously, according to the finding) by those
e about to put it into operation? There were potent reasons
king of the bank and for desiring that it should not have
for asserting deceit. Mercantile creditors were further away
vidually of much less importance, it is easy to see, than the
olitan National Bank, with which it was a part of the plan
up, though it seems not to increase, the Fargo company's
redit; but all that only emphasizes the wrong done in for-
others, equally entitled to consideration, if they were for-
and if they were purposely left out of consideration, still
was the wrong. The apprehended power of temptation
too strong for one of the Fargos when he obtained credit
Dixon banks by a direct denial that judgment notes had been
d, and for another of them when by an evasive denial he in-
lly produced the same belief. Mr. Beale, concerned only
e legal aspects of the situation and pressed with other busi-
stified as he remembered, but is it possible to believe that
Johnson nor Sadler, during the four days devoted to this one
thought and talked of the bearing of the transaction upon
ditor, the bank, and did not think of its import either to
ho should give credit in the future or to present creditors
demands were a factor in the situation and could not have
nitted from an intelligent estimate of what had been and
e done? Their testimony contains no assertion or admission
forgetfulness.

inventors of the scheme were bound to apprehend its probable
uences, and in fact nothing occurred after January 9, when
put into operation, which was not then reasonably to have
reseen. The large existing indebtedness, present embarrass-
nd the unsettled conditions of business were known; the
en adopted to keep the business going was of course known
ts features; it was known too that new credit was to be sought,
at success was uncertain, to say the very least, in a de-
r beyond the ordinary contingencies of a new business start-
ell, or of an old business in an unembarrassed condition.
he rubber companies apprehended a breakdown is demon-
l, aside from other considerations, by the extraordinary and
rd of means which they employed to guard themselves against
reseen contingencies, knowing that by the same means the con-
ces, however disastrous, would be turned upon others, who
l by the appearance of a well sustained and prosperous busi-
hould give credit to the Fargo company. Two years before a
mbarrassment of the company had been bridged over by an

730 agreement with the rubber companies and the bank; but
ment notes only were then required. The lapse of two
had not improved the situation. The debt to the bank had
largely reduced and that to the rubber companies by a small am
but in the aggregate the liabilities still exceeded $400,000.
assets were represented to be considerably in excess of that am
but no examination or close inquiry was made into the truth
representation, though it was of a character which, under the
cumstances, ought to have challenged belief. To a large ex
not then definitely stated, perhaps, but in the report of A
1896 to the Dun agency put at $366,000, they consisted of
and book accounts; and yet for the purpose of devising mea
raise $25,000—a mere bagatelle as a witness accepting the
from Mr. Beale called it—the representatives of the rubber
panies were summoned on a day's notice to
from New York to Chicago and after arrival de
four days to the achievement. If the notes and accounts were
as represented the aid of the rubber companies was not need
raise $25,000 or twice that sum; or, if needed, why were no
notes and accounts turned over at once as collateral either fo
$50,000 alone, or for that and the original indebtedness?
could have been put at once into the same process of collection
was employed six months later. That course could have been
sued without impairing the standing of the company. But th
dent truth is, and Johnson and Sadler were not much deceived
it, that the statement of assets in that particular, and in other
the plant at Dixon put down at $110,000 when in fact worth n
over incumbrances, was greatly exaggerated, and they can h
be credited with not understanding that the company wa
practically insolvent, and without the indulgence of its cre
bound to close its doors. Even if the bank and rubber com
had agreed to hold their demands in abeyance, the company
have been unable to meet its liabilities of $210,000 to
creditors. To say the least, and without going beyond the
reported by the master, the agents of the rubber companies
that the Fargo company owed commercial debts to the amo
$400,000, that while its assets were asserted to be largely in
of that amount, they were not presently available, and tha
company could go on in business for the next month only by
curing a loan of $25,000, and that to be able to go on certainly
longer time $50,000 would be necessary. It was hoped—let
it was believed—by all concerned that with that sum, under th
agreed upon, the company "would be able to weather the st
It was a storm, they knew, and no matter what they believed,

out better reason than the word of their debtor discredited by facts within their own knowledge, they had no right, in an attempt ride out the storm, to adopt a deceitful plan, which they hoped might ceed but by which, if failure came, loss, supposed to be made ossible to themselves, would certainly befall others. They may be credited with having believed that the assets were then fficient and that in the prosecution of the business under the plan posed they would remain sufficient for the payment in full of r own demands, including the added $50,000, but beyond that, their scheme were lawful, they did not need to care, and evidently not during the negotiations very much concern themselves.

It was not, as alleged in the bill, a part of the plan that increased rchases should be made for the purpose of improving the security the rubber companies. On the contrary the opposite course was ommended by Mr. Johnson, and to some extent was pursued, resulting as stated in a reduction of indebtedness about equally in the gregate to the rubber companies and to other creditors. There s no necessity, at least no known necessity, for a different course the interest of the rubber companies, their security being supposed to be ample, and it being in their power, by means of immeate judgments and executions, to exclude all other creditors il their demands were satisfied. The notes and accounts, though leviable by execution, they supposed could not escape them, because they had a contract with the old board of directors for their nsfer, which the new board appointed to do their bidding would performed. This suggestion, it is true, goes a little beyond the ling of the master that "the only purpose of changing the board" s to protect the rubber companies against the giving of preferen- security or judgment notes to other creditors, but it is evident t other emergencies might have arisen that would have called for active interference of the board, directly or indirectly, for the tection of the rubber companies, and it is idle to say that the ard was not constituted as it was for the purpose of meeting what er emergency might arise in the interest of those companies. "Practically they sat on a safety valve . . . so far as protection to e rubber companies was concerned," answered a witness, accepting in the words of counsel; and the full significance of the figure in the fact that the craft they were sailing if allowed to blow unless the navigators should bungle their work, could not inre owners, nor crew, nor certain passengers, but only those who ould have come aboard in the innocent belief that the boat was one ordinary type, and that they were exposing themselves to no ks from which the captain, crew and other passengers were expt. And that craft, it will not be overlooked, was "a going

732 concern," which by the mere appearance given it of staunchness and completeness of equipment was calculated to allure the unsuspecting to a voyage beset with unwonted dangers.

It has been emphasized in the taking of testimony that the Fargos were to be left to conduct the business in their own way, that the new board, or the new trustees, were not to interfere with them, and that McKeever, the new treasurer elect, was to be treasurer in name only. This it is explained was done so that if the former treasurer, who was still to be treasurer in effect and on the letter heads kept in use was still designated as treasurer, should join in the execution of judgment notes, as in 1893 he had done, his authority could be denied by showing that he was not in fact treasurer. It was a fraud on the law to constitute a board of trustees and a treasurer of a corporation of men who from the beginning were pledged not to give attention to their duties or to participate in the management of the business of the corporation, further than to protect the rights of particular creditors in whose interest alone they were given their places; and when, in addition to enjoined silence and secrecy on the subject, letters under the old form of letter head showing the old officers to be still in office, were sent out as they were to old customers and to new, it was an act of deception for which the rubber companies cannot escape liability, since that it should be done was implied in the plan adopted. It was essential to the secrecy which it was understood should be preserved, and was within the stipulation that the Fargos should be allowed to keep the business going and to conduct it without interference. It is no answer to say that those who dealt with the company did not consider nor care who were the officers. A change in the names on the letter heads could not be made because likely to excite inquiry, and inquiry implied exposure.

When it is important to know the motives of men, their conduct is to be considered rather than their assertions, especially when they testify in support of large pecuniary interests, either their own or of others put at hazard by their conduct. In the negotiations of January Charles Fargo at the beginning was master of the situation. He was able to compel and did compel Johnson to accede to his terms, and it was only by reason of an unlawful delivery of the judgment notes, due on demand, before getting the written agreement which he desired, that he found himself in Johnson's power and Johnson determined upon immediate action,—willing as he had declared himself a day or two before to lose $25,000 or $50,000 rather than that the Fargo company should fail. What Johnson wished and sought at the beginning was security for the $186,437.13 due his houses, and when denied that on terms which

volved an immediate suspension of the Fargo company, he began
negotiate on the basis proposed of a loan to enable the company
tinue in business. Touching his own motives Charles Fargo
d to a belief that suspension was not necessary, and would not
He was either purposely ignorant of the situation or unreason-
opeful. He had a special motive, however, for seeking to es
mmediate surrender, in the fact that he and his brother Frank
ndorsers upon the company's paper to other creditors than
nk and rubber companies to the extent of $15,000, and if the
ss could be kept going a few months that paper could be
up. It was taken up before the collapse in August. The
s, therefore, were acting probably under two motives—one
p the business going, with whatever hope they had of ulti-
success, and the other to keep it going long enough to pay off
bligations of the company on which they were personally

The controlling purpose of Johnson was to get security,
n order to get it he yielded to the request of the Fargos for a
increasing by that sum the demands of his houses. That price
nsented to pay in order to obtain security for the whole in-
dness, believing the security adequate under any contingen-
ikely to come about during the ensuing six months deemed
sary for the working out of the scheme. He was willing,
ps in a degree hopeful, that the Fargos should succeed, and
ther creditors should not suffer, but except for the interest of
ubber companies and the integrity of their security he was
ically indifferent, and any attempt to put him in any other at-
e in the transaction strikes us as unnatural, unbusinesslike and
dible.

August, as in January, Charles Fargo was able to dictate terms
e others concerned in what was then to be done. This time he
othing to lose, but something to gain for himself and his broth-
nd for the Metropolitan National Bank, of which he was a
holder. In January, it appears, he opposed the suggestion of
tting the bank into the arrangement with the rubber compa
and it is perhaps not crediting him with too much acumen to
ose that besides other considerations he saw the advantage of
ng that card for the last play. As an original proposition it is
robable that the bank would have joined in the scheme, but in
nd it was at his mercy, because without yielding the $10,000
ust lose its unsecured $40,000, or bring a suit in court, by
h at best only a small percentage could be saved. The rubber
panies could not oppose him without danger of losing the book
unts and bills receivable which had not yet been assigned, and
out exposing their judgment notes to attack by the bank sup-

734 ported by the Fargos, who, perhaps, were the more to be respect-
ed because "knowledge is power." But for the "pressure" wh
Fargo was able to bring upon them, what businesslike reason w
there for the rubber companies consenting to share their securi
with the bank, if they believed it unimpeachable? Whatever the
thought in January, they knew then that the property within reac
of the executions which they could obtain was insufficient, and wi
the accounts receivable added would hardly realize enough, to satis
their own demands. When the agreement was made with the ban
stipulating that each party should account to the other for a pro
rated share of all sums realized, it is evident that any expectation
full payment had been abandoned. It is recited in the agreem
that the parties had "determined to unite their efforts to colle
their respective claims . . . and share pro rata in the resul
thereof," but nowhere is there a hint of a possible surplus to d
vide. The Fargos had carried away their $10,000, the reas
for their share in what had been done, and there was no reas
apparent at the time, for inserting in the agreement even a form
expression of the residuary rights of the Fargo company and
victimized creditors.

The assignment of the bills and accounts as finally made, treate
as the consummation of the agreement to assign made in Januar
was tainted with the illegality of that contract of which it was
part; and if it could be regarded as an independent act, freed of th
taint of its origin, it was illegal because part of a transaction by whi
the managers of an insolvent corporation going out of business s
cured a preference for themselves. If the Fargo company w
justly indebted to Charles and Frank Fargo for money which the
had borrowed upon a pledge of their bank stock, and the $10,0
obtained of the bank was for the purpose of enabling the corporat
to repay them, it was, under the doctrine of *Sutton Mfg. Co.*
Hutchinson, *supra*, an unlawful preference, and made illegal a
other preference granted wholly or partly in consideration there
This proposition applies also to the preference given to the ban
Besides being managing officers, the Fargos were parti
to the original scheme for securing the rubber companies and
course could not prefer themselves over others whom by the fal
pretenses of that scheme they had induced to give credit to the co
poration.

It is contended in behalf of the bank that it entered into the agre
ment with the rubber companies in ignorance of their arrangeme
with the Fargo company, that there was no wrong in its conduct
that nobody was harmed thereby, and, therefore, that whatev
may be said of the position of those companies, the preference whi

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the bank received is not assailable merely because of its contract to join the rubber companies in efforts to collect their respective demands and to prorate the proceeds. The master has reported that at the time of the completion of the arrangement, "neither the bank nor its officers nor attorneys had any knowledge of the change of the directors of the said C. H. Fargo & Co. or of its by-laws." The president of the bank testified concerning his knowledge on the subject. It does not appear that other officers of the bank had anything to do with the matter, and the finding in respect to them is unobjectionable, but if there is evidence in the record we have not found it that the attorney of the bank, who conducted the negotiation and is shown to have had a much more intimate knowledge of the details of the transaction than the president, did not know every feature of the original scheme. The president of the bank himself testified that when he agreed to loan the $10,000 he knew it was necessary to get the authority of the directors for the execution of the judgment notes for the whole sum of $50,000; and that on his asking Porter when the judgment notes would be made, "he said it was easy to make them—that the directors were all in that office (Beale's) or could be gotten." That certainly ought to have put him upon inquiry into the reasons for so extraordinary an organization of the directory; and in an earlier part of his testimony, after saying knowledge that the Fargo company was officered by parties representing the rubber companies, and being asked when he first learned that persons were acting in behalf of the company other than those connected with its management in the sale of goods, he answered: "It might have been the day following; I think it was from something which was said in Mr. Beale's office by Mr. Porter. My impression is that he said that the directors of the company were men who were employes in the office there, or were part of the firm, of the law firm there." And again on cross-examination he admitted that he did learn "of the extent of the indebtedness to the United States Rubber Company and L. Candee & Company, and also learned that they had some kind of an agreement with the Fargo Company by which they were authorized to secure their indebtedness in advance of any other creditors of the company." All this, it is certain from his own testimony, occurred before the judgment notes to the bank were executed, and before the $10,000 was paid over. If the witness testified to his knowledge or ignorance of the change in the by-laws we have failed to find the passage; but it is not of much importance in view of what he did well understand. Besides, if the bank were acquitted of all guilty knowledge and purpose in the transaction, how can it escape the entangling alliance into which it entered with the rubber companies? The agreement between them

736 is still in force, and if the bank is allowed to retain its prefere
it will be bound to pay over to the rubber companies of wha
realizes in the proportion of $14 to every $5 received to its o
use; and if the preference be set aside and the bank permitted
share *pari passu* with other creditors, except the rubber compan
of the amount so received, great or small, it will be bound to acco
to the rubber companies in the same proportion. The validity
that agreement as between the parties is not in issue and cannot
affected by the decree in this case. If unlawful and invalid
against other creditors because made in fraud of their rights, it
nevertheless binding as between the parties, and could not be
nulled at the suit of either against the consent of the other
account of anything done in this case. Courts of equity do n
interfere to relieve parties from the consequences, though unex
pected, of illegal agreements. Moreover, the bank, if permitte
to share in the fund to be distributed, the rubber companies bei
excluded, would receive more in proportion than if the preferen
had been upheld, and the division were made between it and t
rubber companies. It is clear that the rubber companies we
guilty of fraud in fact, and as against subsequent creditors of t
Fargo company should not be allowed to share in the fund
distribution, and for the reasons stated the bank likewise should
postponed.

The fact that some of the creditors were creditors when t
arrangement between the Fargo company and the rubber compani
was put into operation cannot be allowed to change the result.
is impossible to say that they were not injuriously affected, even
respect to their prior demands, and it is certain that they would n
have given further credit if there had been proper publicity abo
the things done which were purposely kept secret from them. T
innocent creditors, whether prior or subsequent, are all entitled
share proportionately in the fund. The rubber companies and t
bank are not entitled to share as against the subsequent defraud
creditors, and therefore cannot be permitted to share with the pri
creditors, since thereby they would be sharing with those who we
defrauded.

The principal appeal is denied, the cross appeal is sustained, an
the decree below is reversed in so far as it permitted the rubb
companies and the bank to share *pari passu* with other creditor
and the cause is remanded with direction that the decree be so mo
ified as to require the payment in full of all claims of other cred
itors, if the fund be sufficient, and that if anything remains it
paid proportionately to the bank and to the rubber companies.

Mr. Justice BROWN dissenting.

On January 6, 1896, the corporation known as C. H. Fargo & was in desperate financial straits. To avoid an immediate col- se and to procure the money necessary to continue the busness, entered into an arrangement with its two principal creditors, by ich the latter undertook to lend $50,000, and the Fargo Com- ny to execute three judgment notes, not only to secure the $50,- advanced, but $45,000 owing to Candee & Company, and $140,- to the United States Rubber Company, with a further stipula- to assign its accounts and bills receivable, should it become essary for it to suspend business. There was a further stipula- that it should not give any judgment notes to other creditors. secure the performance of this, five of the directors of the Fargo mpany were to retire from the board in favor of five persons cted upon the nomination of the preferred creditors.

The general creditors had no knowledge of this arrangement, al- ugh the Metropolitan National Bank was subsequently informed it.

The master found that this arrangement was "for the purpose of ing preferential security to the rubber companies, and that the tter was kept secret in order to allow the Fargo Company an op- rtunity of getting through embarrassments apparently temporary, not with a fraudulent intent as to the other creditors of the mpany," and that the only purpose and object of changing the ard of directors as aforesaid, and of amending the by-laws, so as prevent the giving of judgment notes, except by vote of the ard, was to protect the rubber companies against the giving of er judgment notes to other creditors.

This arrangement continued until August 6, 1896, during which e the Fargo Company continued its business as before, reduced general indebtedness and its indebtedness to Candee & Company a considerable extent, when it was forced to suspend.

The District Judge was of opinion that although the giving of the dgment notes was not unlawful, the arrangement by which the tter was kept secret, while the corporation divested itself of wer to give like notes to other creditors, and continued to carry its business as before, rendered the whole device a constructive aud upon its creditors. In this we all agree.

To make it actually fraudulent, such as to require the claims of ose preferred creditors to be postponed to the claims of the gen- al creditors, I think it should clearly appear either that the pre- rred claims were not bona fide, of which there is no pretense, or at the arrangement was entered into, not for the purpose of tiding e company over its immediate crisis, enabling it to continue busi- ss, and at the same time to secure the preferred creditors, but for e purpose of ultimately winding it up, and in the meantime of

738 giving it credit and enabling it to purchase additional g
which the preferred creditors would thereby be able to
and subject to their own debts.

I find no testimony to satisfy me that an actual fraud upo
general creditors was intended. The device of changing the
ors was evidently not for the purpose of giving up control o
business, but only to secure the arrangement that no other
ment notes should be given, and as a matter of fact the new
ors did not interfere with the business of the company as con
by the Fargos. Indeed, no meeting of directors was held after
change was made. No new creditors were induced to give cr
the company upon the faith of their continuing the business, a
evidence shows that with few exceptions the same persons
creditors in January and in August.

Of the alleged misrepresentations of the Fargos to the Dix
Bank and to the Pfister and Vogel Company that no judgment
had been given, it may be said that they are not admissible
against the claims of the rubber companies, unless there be evi
of a conspiracy between them to defraud their creditors, of wh
there is no evidence aside from the agreement itself, and that in
event none but the Dixon Bank and the Pfister and Vogel Comp
would have been injured by these representations. Such repre
tations might be used as a basis for giving them priority, but th
would not inure to the benefit of other general creditors. Upon
whole, it does not seem to me that such a case of fraud is made
as authorizes the court to postpone the claims of the preferred cr
itors to those of the general creditors, and thereby practically
confiscate them; and that there is no sound reason for departi
from the general rule laid down by the Supreme Court in *Wils
Cotzhausen*, (129 U. S. 329), and *Streeter* v. *Jefferson Co
Bank*, (147 U. S. 36) wherein the preferred creditors were pe
mitted, after their security had been set aside, to stand upon
equality with the general creditors. See also *Comer* v. *Table*,
Fed. Rep. 467), *Brown* v. *Morristown Store Co.*, (42 S. W. Re
161).

The evidence satisfies me that there was a *bona fide* attempt
assist the Fargo Company in continuing its business, with the h
of ultimately pulling it through, and that if this attempt had
successful, it would have redounded greatly to the interest of
general creditors. It was natural, at least, that in making th
attempt the rubber companies should have endeavored to se
themselves, not only for their immediate outlay of $50,000, but
their prior debts. In palliation of the secrecy, which was held
make this constructively fraudulent, it may be said that public
doubtless would have destroyed the entire scheme of raising mon
to carry on the business.

And afterwards, to-wit: On the third day of October, 1899, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Tuesday, October 3, 1899.

Before:

Hon. Henry B. Brown, Circuit Justice.
Hon. William A. Woods, Circuit Judge.
Hon. James G. Jenkins, Circuit Judge.

ited States Rubber Company, a corporation, L. Candee
Co., a corporation, and Metropolitan National Bank,
Chicago, a corporation,

vs.

American Oak Leather Company, W. J. McBride, Estabrook-Anderson Shoe Company, Lambeau Leather Company, University of Chicago Weekly, Crooks, Root & Co., Thilmany Pulp and Paper Mills, Thomas E. and John E. Wilder, United States Leather Company, Eagle Tanning Works,

and

erican Oak Leather Company, Pfister & Vogel Leather Company, Thomas E. Wilder and John Wilder, co-partners as Wilder & Company, Eagle Tanning Works, United States Leather Company, Lambeau Leather Company, The Good Roads, Carson Pirie Monthly Co., Carver Cotton Gin Co., Calvert Lithographing & Engraving Co., B. E. Cole & Co., Consumers' Box Manufacturing Co., The Continent Shoe Company, Crooks, Root & Co., Cycling Gazette, Easton Boot & Shoe Company, Estabrook-Anderson Shoe Company, Farnsworth, Hoyt & Co., I. P. Farnum, C. C. Farwell & Co., P. A. Field & Co., Fletcher Mf'g. Co., A. F. Gallum & Sons, H. M. George & Co., Goldsmith, Rosenbush & Levie, Goodyear Rubber Co., The R. J. Gunning Co., M. L. Hiller & Sons, A. J. Marcus & Co., J. & H. Mayer, H. Michaels & Co., Milwaukee Tack Co., W. J. McBride, Pliable Shoe Company, Rouse, Maniere, Williams & Co., Shattuck & Binger, A. W. Shaw & Co., T. J. Shay & Co., The Singer Manufacturing Co., W. W. Spaulding, Spinney, Virtue & Co., Stowe, Bills & Hawley, Thilmany Pulp & Paper Mills, Tubular Rivet & Stud Company, University of Chicago Weekly, George H. Van Pelt, Wachusett Mills, Weir Bros. Paper Co., Consolidated Hand Method Lasting Machine Co., Hilliard & Merrill, Tripp Giant Leveller Co., Dry Goods Reporter Co., and E. H. VanIngen & Co

vs.

United States Rubber Company, L. Candee & Co., The Metropolitan National Bank of Chicago, and C. H. Fargo & Co.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

This cause came on for hearing and all the parties hereto ha
stipulated that said appeal and cross-appeal should be heard toge
upon the transcript of the record of the Circuit Court filed in
original appeal and upon the transcript of the supplemental re
of the Circuit Court filed herein in said cross-appeal, the same
heard upon said transcripts of record, and was argued by the co
for the respective parties.

ON CONSIDERATION WHEREOF, it is now here ordered, adjud
and decreed by this court that the decree of the said Circuit Cou
this cause be, and the same is hereby, reversed with costs, in so
as it permitted the rubber companies and the bank to share *pari*
with other creditors in the fund to be distributed; and that this ca
be, and the same is hereby, remanded to the said Circuit Court wit
rection that the decree be so modified as to require the payment in
of all claims of other creditors, if the fund be sufficient, and that
anything remains it be paid proportionately to the bank and to
rubber companies.

UNITED STATES CIRCUIT COURT OF APPEALS

741 For the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States Circuit Cou
Appeals for the Seventh Circuit, do hereby certify that the foreg
printed and typewritten pages, numbered from 1 to 740, inclusi
contain a true copy of the transcripts of record and proceedings in
United States Circuit Court of Appeals for the Seventh Circuit, in
case of United States Rubber Company et al. vs. American O
Leather Company et al., and in the case of American Oak Leat
Company et al. vs. United States Rubber Company et al., Nos
and 599, October term, 1898, as the same remain upon the files a
records of the United States Circuit Court of Appeals, for
Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix
seal of said United States Circuit Court of Appeals for the Seve
Circuit, at the City of Chicago, this eighteenth day of October, A
1899.

(Signed) EDWARD M. HOLLOWAY,
(Seal.) Clerk of the United States Circuit Court of Appe
for the Seventh Circuit.

ITED STATES OF AMERICA, *ss:*

e President of the United States of America to the honorable the
dges of the United States circuit court of appeals for the seventh
rcuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in
ich United States Rubber Company, L. Candee & Co., and The
tropolitan National Bank of Chicago are appellants and The
erican Oak Leather Company, W. J. McBride, Estabrook-Ander-
Shoe Company, *et al.* are appellees, and The American Oak
ther Company *et al.* are appellants and United States Rubber
mpany *et al.* are appellees, which suit was removed into the said
cuit court of appeals by virtue of an appeal and cross-appeal
m the circuit court of the United States for the northern district
Illinois, and we being willing for certain reasons that the said
se and the record and proceedings therein should be certi-
d by the said circuit court of appeals and removed into the
preme Court of the United States, do hereby command you that
u send without delay to the said Supreme Court, as aforesaid,
e record and proceedings in said cause, so that the said Supreme
urt may act thereon as of right and according to law ought to be
ne.

Witness the Honorable Melville W. Fuller, Chief Justice of the
ited States, the fourteenth day of December, in the year of our
rd one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States. No. 436, Octo-
r term, 1899. United States Rubber Co. *et al. vs.* American Oak
ather Company *et al.* Writ of certiorari. Filed Feb. 26, 1900.
dward M. Holloway, clerk.

NITED STATES OF AMERICA, } *ss:*
Seventh Circuit, }

In obedience to the command of the foregoing writ of certiorari
d in pursuance of the stipulation of the parties, a full and true
py of which is hereto attached, I do hereby certify and return
at the transcript of the record filed with the application to the
preme Court of the United States for a writ of certiorari in the
se of United States Rubber Company, L. Candee & Co., and
he Metropolitan National Bank of Chicago, appellants, and The
merican Oak Leather Company, W. J. McBride, Estabrook-Ander-
n Shoe Company, *et al.*, appellees, and The American Oak Leather
ompany *et al.*, appellants, and United States Rubber Company *et*
l., appellees, is a full, true, and complete transcript of the record
pon which said cause was heard in the United States circuit court

of appeals for the seventh circuit, together with all proceedings in said court.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, Illinois, this twenty-sixth day of February, A. D. 1900.

EDWARD M. HOLLOWAY,
Clerk U. S. Circuit Court of Appeals, Seventh Circuit.

UNITED STATES OF AMERICA, *Seventh Circuit*, } ss:

In the United States Circuit Court of Appeals for the Seventh Circuit.

UNITED STATES RUBBER COMPANY, L. CANDEE & Company, and Metropolitan National Bank of Chicago, Appellants,
vs.
AMERICAN OAK LEATHER COMPANY, W. J. McBride, Estabrook-Anderson Shoe Company, *et al.*, Appellees. } Appeal.

AMERICAN OAK LEATHER COMPANY ET AL., Appellants,
vs.
UNITED STATES RUBBER COMPANY ET AL., Appellees. } Cross-Appeal.

It is stipulated by and between the parties hereto, by their respective counsel, that the certified copy of the transcript of record in this cause filed by the clerk of this court in the Supreme Court of the United States in an application there made for a writ of certiorari in this cause, there entitled United States Rubber Company, L. Candee & Co., and The Metropolitan National Bank of Chicago, petitioners, *vs.* American Oak Leather Co. *et al.*, respondents, No. 436, October term, 1899, shall be taken as a return to the writ of certiorari granted by said Supreme Court in said cause on the 11th day of December, 1899, and issued under date of December 14th, 1899.

GEORGE A. FOLLANSBEE.
MITCHELL D. FOLLANSBEE.
HENRY S. ROBBINS,
Counsel for Petitioners.

JACOB NEWMAN,
G. W. NORTHRUP, JR.,
FREDERICK A. SMITH,
FRANK A. HELMER,
HORACE KENT TENNEY,
WM. J. MANNING,
SAMUEL P. McCONNELL,
For Respondents.

Endorsed: Filed February 26, 1900. Edward M. Holloway, Clerk.

[Endorsed:] File No. 17,550. Supreme Court U. S., October Term, 1899. Term No., 436. United States Rubber Co. *et al.*, petitioners, *vs.* American Oak Leather Co. *et al.* Writ of certiorari and return. Filed Feb'y 28, 1900.

[redacted]

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No.

UNITED STATES RUBBER COMPANY, A CORPORATION, L. CANDEE & CO., A CORPORATION, AND METROPOLITAN NATIONAL BANK OF CHICAGO, A CORPORATION,

Petitioners,

vs.

AMERICAN OAK LEATHER COMPANY, PFISTER & VOGEL LEATHER COMPANY, THOMAS E. WILDER AND JOHN WILDER, CO-PARTNERS AS WILDER & COMPANY, EAGLE TANNING WORKS, UNITED STATES LEATHER COMPANY, LAMBEAU LEATHER COMPANY, THE BARBER BROS. COMPANY, BOSTON BLACKING CO., BULLETIN & GOOD ROADS, CARSON-PIRIE MONTHLY CO., CARVER COTTON GIN CO., CALVERT LITHOGRAPHING & ENGRAVING CO., B. E. COLE & CO., COLBURN, FULLER & CO., CONSUMERS' BOX MANUFACTURING CO., THE CONTINENT SHOE COMPANY, CROOKS, ROOT & CO., CYCLING GAZETTE, EASTON BOOT & SHOE COMPANY, ESTABROOK-ANDERSON SHOE COMPANY, FARNSWORTH, HOYT & CO., I. P. FARNUM, C. C. FARWELL & CO., P. A. FIELD & CO., FLETCHER MF'G CO., A. F. GALLUM & SONS, H. M. GEORGE & CO., GOLDSMITH, ROSENBUSH & LEVIE, GOODYEAR RUBBER CO., THE R. J. GUNNING CO., M. L. HILLER & SONS, A. J. MARCUS & CO., J. & H. MAYER, H. MICHAELS & CO., MILWAUKEE TACK CO., W. J. McBRIDE, PLIABLE SHOE CO., ROUSE, MANIERE, WILLIAMS & CO., SHATTUCK & BINGER, A. W. SHAW & CO., T. J. SHAY & CO., THE SINGER MANUFACTURING CO., W. W. SPAULDING, SPINNEY, VIRTUE & CO., STOWE, BILLS & HAWLEY, THILMANY PULP & PAPER MILLS, TUBULAR RIVET & STUD COMPANY, UNIVERSITY OF CHICAGO WEEKLY, GEORGE H. VAN PELT, WACHUSETT MILLS, WEIR BROS. PAPER CO., CONSOLIDATED HAND METHOD LASTING MACHINE CO., HILLIARD & MERRILL, TRIPP GIANT LEVELLER CO., DRY GOODS REPORTER CO., E. H. VAN INGEN & CO., C. H. FARGO & CO. AND JOHN C. AMES, UNITED STATES MARSHAL.

PETITION FOR CERTIORARI.

To the Honorable the Justices of the Supreme Court of the United States:

Your petitioners, United States Rubber Company, a corporation organized under the laws of the State of New Jersey, L. Candee & Co., a corporation organized under the laws of the State of Connecticut, and the Metropolitan National Bank of Chicago, a banking corporation organized under the National banking laws of the United States, respectfully represent unto your Honors—

1. That on the 11th day of September, 1896, the American Oak Leather Company, one of the respondents hereto, instituted in the Circuit Court of the United States for the Northern District of Illinois, Northern Division, a suit in chancery against these petitioners, C. H. Fargo & Co., a corporation of Illinois, and John W. Arnold, United States Marshal for the Northern District of Illinois, in which it was averred that defendants were citizens of the states of Illinois, Connecticut and New Jersey, while complainant was a citizen of the State of Ohio, and that the complainant had recovered a judgment against C. H. Fargo & Co., upon which an execution had been issued and returned *nulla bona*, and in which bill said complainant set forth, and sought to have adjudged fraudulent as against the creditors of C, H. Fargo & Co., the following preferences given by C. H. Fargo & Co., on or prior to August 6, 1896, to-wit:

Two judgments by confession against Fargo & Co., entered August 6, 1896, in the United States Circuit Court at Chicago, one in favor of the United States Rubber Company for $145,400, upon a judgment note due on demand for $140,000, dated January 6, 1896, and one in favor of the petitioner, L. Candee & Co., for $38,300, upon a judgment note of the same date, due on demand, for $51,500.

An assignment of book accounts August 6, 1896, by Fargo & Co., to the petitioner, United States Rubber Company.

A judgment by confession in a state court at Chicago, August 6, 1896, against Fargo & Co. in favor of petitioner, Metropolitan National Bank, for $25,250, upon a judgment note dated August 5, 1896, payable to said bank, for $25,000.

Two warranty deeds from Fargo & Co. to said bank, dated August 6, 1896, conveying Fargo & Co.'s factory at Dixon, Illinois.

2. That subsequently other creditors (respondents herein), whose claims aggregate $151,194.09, joined complainant in said suit.

3. That at the time of the filing said bill the tangible assets of said C. H. Fargo & Co. had been levied upon, and were held, under executions issued upon said judgments in favor of the petitioners United States Rubber Company and L. Candee & Co.; and that after the filing of said bill the court appointed a receiver of said assets, including the book accounts assigned as aforesaid, and that said assets and accounts have now been converted into money, and said receiver now has in his hands the sum of about $111,000, subject to such disposition as shall be made thereof by the decree in said suit.

4. That thereafter answers were filed by petitioners to said bill, and the said cause having been brought to issue was referred by the court to a master in chancery "to take proofs therein and report the same, together with his conclusions thereon as to the facts only," and that after a hearing the master reported at length the facts in said case (Rec., p. 158-171), and found that in the giving of the preferences aforesaid there was no fraud in fact or want of good faith shown on the part of these petitioners or said Fargo & Co.

5. That thereafter the Circuit Court (Judge Grosscup presiding) on the 4th day of May, 1899, approved, ratified and confirmed said master's report, but held and adjudged said preferences aforesaid to be *constructivel* fraudulent, and by its decree set aside all of said preferences and directed said money in the hands of said receiver to be distributed *pro rata* among said creditors of C. H. Fargo & Co., including these petitioners.

6. That thereafter these petitioners prosecuted their appeal to the Circuit Court of Appeals of the Seventh Judicial Circuit, alleging that said Circuit Court had erred in holding said preferences constructively fraudulent, and said American Oak Leather Company and other creditors prosecuted to said court their cross appeal, alleging that said Circuit Court had erred in permitting these petitioners to share *pro rata* with the other creditors in the distribution of said fund.

7. That thereafter said two appeals were heard together before said Circuit Court of Appeals composed of their Honors Mr. Justice Brown, Judge Woods and Judge Jenkins, and that Court, on the 3rd day of October, 1899, by order or decree reversed the decree of the Circuit Court in part and remanded said cause to the Circuit Court, with directions to exclude petitioners from participation in the distribution of said fund, which decision and order of said Circuit Court of Appeals, as petitioners are advised, is final under the act of Congress of March 3, 1891, unless a writ of *certiorari* issue herein.

8. That in the decision of said Circuit Court of Appeals the three judges thereof concurred in holding said preferences constructively fraudulent, but his Honor Mr. Justice Brown dissented from the decision of said court in so far as it held the conduct of petitioners in and about the taking of said preferences such as to justify the court in depriving them of their right to participate in the distribution of said assets of Fargo & Co., Mr. Justice Brown in this recpect concurring with the Circuit judge, who, as already stated, also held these petitioners entitled to share *pro rata* in the distribution of said fund.

9. That the Circuit Court of Appeals decided that cer-

tain preferences acquired by means of judgment notes by two of said petitioners were constructively fraudulent, because, immediately after the giving of said notes and as a part of the agreement between C. H. Fargo & Co. and said petitioners which resulted in the giving of such preferences, clerks in the office of counsel for said petitioners became, and continued until the entry of said judgments, the majority of the board of directors of said debtor corporation, without notice thereof to the general creditors of said company; and petitioners are advised by counsel that such decision is inconsistent with the decisions in similar cases of this court and of the Supreme Court of Illinois, where said preferences were given, and that in order to secure uniformity of decision thereupon, and because said question is one of gravity and importance, your petitioners are advised by counsel and believe that said decision of said Circuit Court of Appeals ought to be reviewed, and said question be finally settled by this court through a writ of *certiorari* herein, to said Circuit Court of Appeals.

10. That your petitioners are also advised by counsel that the question whether the conduct of petitioners in the taking of such preferences was such as to deprive them of their rights as general creditors, is of such gravity, importance and frequent recurrence as to justify the decision thereof by a greater unanimity of judicial opinion than exists in the said Seventh Circuit, and that to that end, said question ought to be decided by this court by means of a *certiorari* herein to said Circuit Court of Appeals.

That your petitioners present herewith and make a part of this petition a certified copy and transcript of the record of this case in said Circuit Court of Appeals.

Wherefore your petitioners pray that this court issue a

writ of *certiorari* to the United States Circuit Court of Appeals for the Seventh Judicial Circuit, directing it to certify to this court a record of its proceedings in said cause.

UNITED STATES RUBBER CO.,
L. CANDEE & CO.,
METROPOLITAN NATIONAL BANK,
By HENRY S. ROBBINS,
Their Solicitors.

EDWARD S. ISHAM.
GEORGE A. FOLLANSBEE,
Of Counsel.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

Gilbert E. Porter, being duly sworn, says that he is one of the attorneys and the agent in this behalf for the petitioners named in the foregoing petition; that he has read said petition and knows the contents thereof, and that the same is true in substance and in fact, except as to the matters which are therein stated to be on information and belief, and that as to those matters he believes said petition to be true.

GILBERT E. PORTER.

Subscribed and sworn to this.....day of October, 1899.

.....
Notary Public.

Office Supreme Court U. S.
FILED
DEC 4 1899
JAMES H. McKENNEY,
Clerk.

A No. 150

Isham, Foulkrod & Robbins for Pet.

IN THE

Supreme Court of the United States.

Filed Dec. 4, 1899.

OCTOBER TERM, A. D. 1899.

UNITED STATES RUBBER CO., L. CANDEE & CO. and METROPOLITAN NATIONAL BANK OF CHICAGO,

Petitioners,

vs.

AMERICAN DAE LEATHER CO. et al.,

Respondents.

Petition for Writ of Certiorari.

436

BRIEF ON MOTION FOR CERTIORARI.

EDWARD S. ISHAM,
GEORGE A. FOULKROD,
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Attorneys for Petitioners.

The Rumford Printing Company, 29 Jackson St., Chicago.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1899.

UNITED STATES RUBBER CO., L. CANDEE & CO. and METROPOLITAN NATIONAL BANK OF CHICAGO,
Petitioners,
vs.
AMERICAN OAK LEATHER CO. et al.,
Respondents.

Petition for Writ of Certiorari.

BRIEF IN SUPPORT OF PETITION.

There are two questions in this case, as follows:

1. Whether certain preferences given by an Illinois trading corporation while insolvent to the petitioners, three of its creditors, are fraudulent, and therefore invalid; and,

2. If so, whether the conduct of petitioners in taking and relying upon such preferences was such as to justify the court, when distributing the insolvent estate, in postponing their claims to those of the other creditors and (to adopt the apt the expression of Mr. Justice Brown) thereby "practically confiscate them."

Upon the first question Judge Grosscup, who tried the case in the Circuit Court, and Mr. Justice Brown and Judges Woods and Jenkins, who heard the case in the Circuit Court of Appeals, decided against the petitioners. The second question Judge Grosscup decided in favor of the petitioners, as did Mr. Justice Brown in a dissenting opinion in the Court of Appeals, while the other two judges of that court decided against the petitioners' right to pro rate with the other creditors, and in this particular reversed the decree of the Circuit Court.

A writ of *certiorari* is now sought upon the ground that these questions are of such importance as to justify the decision thereof by this court. The decision of the lower court upon the first question is thought to be in principle inconsistent with that of this court in *Sanford Tool Co.* v. *Howe*, 157 U. S., 312; while the second question is one of such frequent recurrence that its settlement by greater concord of judicial opinion than now exists in the Seventh Judicial Circuit seems desirable. As the matter now stands the views of two of the judges of the Court of Appeals has made that the law in the Seventh Circuit which two other judges of the same court declare should not be the law.

For a number of years prior to January 6, 1896, C. H. Fargo & Co., a corporation, had conducted a large business (from $1,250,000 to $1,400,000 per annum) as manufacturers and wholesale dealers in boots and shoes in Chicago, with a factory at Dixon, Ill., having, in 1892, succeeded a firm of that name. This corporation was essentially a family affair, all its stock being owned by three brothers, Charles, Frank and Edward Fargo. From 1892 until January 9, 1896, these brothers constituted all its officers, Charles being president, Frank

vice-president and treasurer, and Edward secretary. They, together with four employes of the company who owned no stock and took no part in the management of its business (Rec., p. 159), constituted its board of directors.

On the 6th day of August, 1896, Fargo & Co. failed, and this resulted in the following preferences:

Two judgments by confession, August 6, 1896, in the Federal Court in Chicago, against Fargo & Co., one in favor of the United States Rubber Company for $145,400 upon a judgment note payable on demand for $140,000, and dated January 6, 1896, and one in favor of L. Candee & Co. for $38,300, upon a judgment note of the same date, due on demand, for $51,500.

An assignment, August 6, 1896, by Fargo & Co. to the United States Rubber Company of all its book accounts, etc., as collateral security to its indebtedness to said two rubber companies, pursuant to an agreement to so assign made January 6, 1896.

A judgment by confession in the State Circuit Court at Chicago, August 6, 1896, against Fargo & Co. in favor of the Metropolitan National Bank for $25,250, upon a judgment note dated August 5, 1896, and made by Fargo & Co., payable to said bank, for $25,000.

Two warranty deeds from Fargo & Co. to said bank, dated August 6, 1896, conveying its factory at Dixon, Illinois.

Upon the judgments in favor of the United States Rubber Company and L. Candee & Co. (hereafter called the rubber companies), executions were immediately issued and levied upon all the stock in trade and other tangible assets of Fargo & Co.: whereupon on the 11th

day of September, 1896, the American Oak Leather Company, after having obtained a judgment against Fargo & Co., and the return of an execution thereon *nulla bona*, filed the present bill against Fargo &Co., these petitioners and the marshal, averring a diversity of citizenship of complainant and defendants, attacking the foregoing preferences as illegal, because made with intent to defraud, hinder and delay the other creditors of Fargo & Co., and praying that the same might be set aside and its assets applied to the payment of its *bona fide* creditors.

Subsequently other creditors, whose claims aggregated about $150,000, joined complainant in the suit.

After the case was at issue the Circuit Court, on motion of complainant, referred it to Henry W. Bishop, Esq., master in chancery, "to take proofs herein and report the same, together with his conclusions thereon, as to the facts only" (Rec., p. 156), and after a protracted hearing the master made his report, finding the facts to be substantially as set forth in the answers of these petitioners. That report, so far as relevant to this application, is as follows (Rec.,pp. 160–171):

"There was due January 6, 1896, to Candee & Company upon the notes of C. H. Fargo & Co. (given in settlement in November, 1895), the sum of $44,900, and on the same date there was due from the Fargo Company to the United States Rubber Company an open account for proceeds of sale of consigned goods the sum of $141,537.13.

It is shown by the testimony, and I so find, that about January 2, 1896, the C. H. Fargo Co., anticipating difficulty in meeting its regular obligations maturing during that month, applied to one Charles L. Johnson, who represented both the Candee Company and the United States Rubber Company, for a loan of $50,000, representing that the Fargo Company was perfectly solvent and that this accommodation would relieve it from its

temporary embarrassments, and enable it to go on with its business.

This application was granted, and on January 6, 1896, Johnson agreed, acting for L. Candee Company, to lend the Fargo Company the sum of $50,000 for six months upon the understanding that this loan and the indebtedness of $44,900 upon the notes previously given as aforesaid and the balance due the United States Rubber Company, and which might become due it, should be secured in such a way as might be satisfactory to their counsel, Mr. Beale, of the law firm of Isham, Lincoln & Beale.

The proposition was accepted on the 6th day of January, 1896, and it was agreed and arranged between the parties as follows:

First. That the $50,000 should be advanced to the Fargo Company by L. Candee & Co., partly on that date and during the succeeding two weeks.

Second. That the Fargo Company should that day execute and deliver its three judgment notes, one for $45,000 payable on demand to the order of L. Candee & Company to secure that company with respect to its liability as endorser or guarantor upon the notes for $44,900 given previous to January, 1896, one for $51,500 payable on demand to L. Candee & Company, as collateral security to plain notes of the Fargo Company which were given as evidence of the advance of $50,000 then to be made, and one for $140,000 payable on demand to the order of the United States Rubber Company, as collateral security to the then existing and to any future indebtedness of the Fargo Company to the United States Rubber Company as aforesaid.

Third. That in case the Fargo Company should at any time find it necessary to suspend business, it would assign as additional security all its accounts and bills receivable; that it should not give any judgment notes to other creditors which would impair the security to the Rubber Companies, *and that the $50,000 advance should be used by the Fargo Company in reduction of its general indebtedness as it matured;* and

Fourth. That the four employes of the Fargo Company who were on the board of directors, and also E. A. Fargo, should retire from the board and there should be

elected in their places by the stockholders of the company five persons, to be nominated by said Beale, in whom he had confidence, one of whom should become secretary and treasurer, *and that the directors so to be elected at Beale's nomination should not hamper or interfere with the proper carrying on of the ordinary business of the company*

* * * * *

I find that the attention of the general creditors was never called to this arrangement and they had no knowledge of it. The Metropolitan National Bank first learned of it at or about the time a judgment note was given it to secure the payment of its claim of $50,000 as hereinafter stated.

I find that in pursuance of this arrangement, and on January 6, 1896, a meeting of the board of directors of the C. H. Fargo & Co. was had before any change in said board, when a resolution was passed authorizing the borrowing of the $50,000, the giving of judgment notes, as in said agreement provided for, and assignment of the accounts, bills and choses in action upon the contingencies agreed upon; and upon the same day the three judgment notes referred to were executed and delivered by Charles E. Fargo, president of the company; Frank M. Fargo, vice-president and treasurer, and E. A. Fargo, secretary, and the loan of $50,000 was perfected, $10,000 being advanced at the time and the balance of $50,000 during the succeeding two weeks.

This action was ratified on the 8th day of January, 1896, by the unanimous vote of the stockholders of C. H. Fargo & Co., all the shares being represented.

I find that in pursuance also of said arrangement, and as a part of it, at a meeting of the stockholders of C. H. Fargo & Co., held January 9, 1896, George C. Madison, Tiffany Blake, Buell McKeever, Frederick B. Fuller, Gilbert E. Porter, Charles E. Fargo and F. M. Fargo were duly elected directors for the ensuing year.

The first five, except Blake, were employes in the office of William G. Beale, and said Blake was assistant corporation counsel of the City of Chicago, of which William G. Beale was then corporation counsel, and all five were elected by the stockholders at the suggestion of said

Beale. Subsequently, at a meeting of the newly constituted board, at which Charles E. Fargo was re-elected president of the company, Frank M. Fargo was re-elected vice-president of the company and Buell McKeever was elected secretary and treasurer of the company, the by-laws of the company were amended providing against the giving of judgment notes or preferential security without special authorization of the board of directors.

I also find that the change of the board of directors and officers, and the changes of the by-laws of said company and the resolution thereof authorizing judgment notes and assignments of accounts if necessary, were all for the purpose of giving preferential security to the Rubber Companies, and the matter was kept secret in order to allow the Fargo Company an opportunity of getting through embarrassments apparently temporary but not with a fraudulent intent as to the other creditors of the company. The only purpose and object of changing the board of directors as aforesaid and of amending the by-laws was to protect the Rubber Companies against the giving by the Fargo Company of preferential security or judgment notes to other of its creditors which should be superior to the security of the Rubber Companies.

I further find that the arrangement as made was carried out in good faith by the parties and that the directors elected at the suggestion of said Beale took no part in the active management of the Fargo Company after their election, and that no stockholders' or directors' meetings of the Fargo Company were held after January 9, 1896, until August 5, 1896.

I find that on January 9, 1896, which was the date of the meeting of the new directors, the authorized capital stock of the said corporation of C. H. Fargo & Co. was $400,000 and the debts of the corporation on January 6, 1896, as follows:

Amount owing United States Rubber Company	$141,537 13
Amount owing Candee & Company	44,900 00
Amount owing Metropolitan National Bank.	50,000 00
Amount owing other creditors	210,216 20
Total	$446,653 33

I find that the value of the assets of C. H. Fargo & Co. at that time had not been definitely ascertained, but I find, as a matter of fact, as the results of efforts since made in collecting the same in liquidation and from other sources of information disclosed by the testimony, that on the 6th day of January, 1896, the assets of said company were not sufficient to discharge its indebtedness, *of which fact the defendants, the Rubber Companies, are shown to have been ignorant, relying upon the representation of the Fargos that there was a large excess of assets over liabilities.* The fact that Johnson, representing the Rubber Companies, made no detailed examination of the assets of the company, but consented to advance the money which was applied for, is evidence to my mind that he believed in the assurances which were given him by the Fargos of the condition of their company.

I further find that between Janaary 6, 1896, and August 6, 1896, the new liabilities incerred by said corporation to creditors other than the Rubber Companies and the bank were $246,660.54 (of which there was due and unpaid on August 6, 1896, $142,690.95), and that during the same period the Fargo Company paid out more than $300,000 to its general creditors in the regular course of business, paying substantially all of the indebtedness of January 6, 1896, which was largely to the same persons who are now creditors.

I further find that between January 6 and August 6, 1896, the Fargo Company continued its business as before, *reducing its general indebtedness to a considerable extent with its general creditors;* that during said time it paid Candee & Co. $44,900, the amount of its indebtedness prior to January 6, 1896, and $13,470 on account of the advance of $50,000 as aforesaid; that during said time it paid to the United States Rubber Company $15,000 on account of the indebtedness to that company existing January 6, but it also sold consigned goods of that company to the amount of $24,534.04, of which it remitted only $5,495.40; and that on August 6, 1896, there was due to the United States Rubber Company the sum of $142,424.81, and to L. Candee & Company the sum of $36,530.

I further find from the testimony that the indebtedness

of the Fargo Company which was incurred after January 9, 1896, up to the time of the entry of judgment upon the judgment notes referred to was incurred in ignorance of the giving of the judgment notes and the change of directors and of the change of officers and of the arrangement existing between the Rubber Companies and the Fargo Company, and that the amount of the claims that were thus contracted and is still unpaid exceeded $110,000.

I find that while Johnson and Sadler, representing the Rubber Companies, were here from January 2 to January 6, 1896, that it was then agreed that separate books showing sales of consigned goods should be kept and the proceeds of the sales thereof should be kept in a separate bank account, which was done.

I find that the advance of $50,000 on January 6, 1896, and the giving of the judgment notes and security referred to, was the result of an evident feeling upon the part of all the parties to the transaction, and was in the belief and expectation on their part, that through the assistance which was in this way afforded the Fargo Company it would be enabled to continue its business successfully and become ultimately relieved of its financial embarrassment, and that said arrangement was entered into in good faith and without any fraudulent intent.

I find that the testimony does not show that the parties were influenced in making the arrangement aforesaid upon a belief of the insolvency of the Fargo Company at that time, and the conduct of the corporation afterwards and until about the time of the entering up of the judgment notes, in my judgment, clearly indicated the hope and expectation that the Fargo Company would be finally relieved of its troubles.

In support of this conclusion I find that in the meantime, and between January 6, 1896, and August, 1896, in the regular course of its business the Fargo Company reduced to a large extent the indebtedness which existed on January 1, 1896, increasing the capacity of their manufacturing business, reducing its stock and discharging to a large extent its general liabilities, except with the United States Rubber Companies and the Metropolitan Bank, with an evident purpose and expectation of

continuing its business; during which time nothing is shown to have occurred with these parties inconsistent with this theory.

I find that during this period the general creditors were substantially the same as before, with the exception of the Eagle Tanning Works of Chicago, whose claim of $2,500.24 has been established, for the goods purchased on credit between April 1, 1896, and July 15, 1896, and Wilder & Company, and the Pfister & Vogel Leather Company, hereinafter mentioned.

* * * * *

And I also find that during this time upon the letter-heads of the C. H. Fargo Company the printed names of the Fargos, treasurer and secretary, appeared as before, without anything to show any change in the construction or management of said corporation, nor were such changes in any way mentioned, or their real condition disclosed.

* * * * *

I further find that during many years prior to January 6, 1896, the C. H. Fargo Company had been doing business with the Metropolitan National Bank of this city, its banker, resulting in the creation from time to time of a large indebtedness to said bank, which was finally reduced, in the usual course of business, so that on the 5th day of August, 1896, said indebtedness amounted to the sum of $40,000.

That the Metropolitan National Bank, during the summer of 1896, applied to C. H. Fargo & Co. to reduce its indebtedness to it and to finally discharge it by the month of November following.

I further find that at the same time said bank gave the C. H. Fargo Company said notice, and down to about the 3d or 4th day of August, A. D. 1896, it had no knowledge of any transactions which occurred between it and the Rubber Companies in the previous month of January; and that it did not know of the change in the board of directors of said C. H. Fargo & Co., or that it had given the Rubber Companies judgment notes for an indebtedness owing by it to said Rubber Companies, or of the agreement which had been entered into in respect to the same between it and the Rubber Companies, or of the action which had been taken by the newly constituted board in pursuance of this agreement.

I further find that on or about Monday, the 3d day of August, A. D. 1896, Charles E. Fargo, president of the said C. H. Fargo & Co., called at the Metropolitan National Bank, and while there applied to the bank for an additional loan of $10,000.

I find that during this interview, or shortly thereafter, the said Charles E. Fargo informed the president of said bank that the said C. H. Fargo & Co. had given the Rubber Companies judgment notes for the amount of its indebtedness to them, and that while said C. E. Fargo insisted that the assets of his company were at that time largely in excess of its indebtedness and ample to meet the entire amount thereof, that, owing to the difficulty in making its collections as rapidly as its outstanding paper matured, his company would be obliged to fail unless it received some assistance.

I find that at the time of said interviews the said C. H. Fargo represented to the president of said bank that the said C. H. Fargo & Co. was indebted to him and his brothers for money exceeding $10,000 which they had borrowed upon their notes for the benefit of the company, and which they had paid over to the company for use in its business, and that said Fargo brothers had put up some bank stock that they owned as collateral to said notes, and C. E. Fargo thereupon proposed to said bank that if it would loan said C. H. Fargo & Co. $10,000 in addition to its then existing loan, so that said company could reimburse him and his brothers and enable them to take up said notes, he would procure from the said C. H. Fargo & Co. judgment notes for said bank, both for said sum so advanced as aforesaid, and also for notes then remaining due said bank to the amount of $40,000.

I further find that said bank acceded to said proposition, and loaned said C. H. Fargo & Co. said additional sum of $10,000, receiving two judgment notes of the Fargo Company for the sum of $25,000 each, crediting to the amount of said C. H. Fargo & Co. in said bank said sum of $10,000.

I further find that at the time of the completion of this arrangement with said bank, neither the bank nor its officers nor attorneys had any knowledge of the change

of the board of directors of the said C. H. Fargo & Co., or of its by-laws, but the bank did know that the Rubber Companies, as a part of the final arrangements made, were entitled equally with themselves to enter judgment upon the judgment notes which had been given.

I further find that neither the complainants herein nor any of the other creditors of the said C. H. Fargo & Co. were led to give credit to said company by reason of the transactions had between it and the bank, nor did any of said parties sell any goods to said C. H. Fargo & Co. subsequent to the time when said bank made said $10,000 loan aforesaid to C. H. Fargo & Co., nor did the said bank in any way participate in or have any knowledge of the change in the by-laws of said C. H. Fargo & Co. as aforesaid.

I further find that from about the time when the said judgment notes were given to said bank, as aforesaid, the said bank entered into a stipulation with the Rubber Companies by which it was agreed that they should unite their efforts to collect their respective claims against the said C. H. Fargo & Co. and should share *pro rata* in whatever proceeds should be derived therefrom.

* * * * *

I further find upon the testimony submitted to and taken before me in connection with this branch of the case, that the defendant, the Metropolitan National Bank, is not shown to have been guilty of any actual fraud as against the complainants or the other creditors of C. H. Fargo & Co. by reason of any of its transactions with the said defendants, C. H. Fargo & Co. or the said Rubber Companies.

I further find that August 6, 1896, before entry of the judgments in favor of the Rubber Companies as set forth in the pleadings, C. H. Fargo & Co., by its president, C. E. Fargo, duly assigned to the United States Rubber Company all the accounts and bills receivable of the Fargo Company as further security for the indebtedness to the Rubber Companies, pursuant to and in accordance with the agreement made in January, 1896.

I find nothing in the testimony which has been taken before me upon this reference which so changes the record which was before the court upon the hearing of the ap-

plication for the appointment of a receiver as to lead me to a conclusion different from that announced by the court at that time; *indeed, the effect of the testimony, in my judgment, is to explain and strengthen the conclusion then expressed by the court, that there was no fraud in fact or want of good faith shown in the conduct of any of the defendants in respect to the transactions complained of; and upon a careful examination of the whole record and testimony I so find and report.*"

Sundry exceptions filed by complainant and the other creditors who had come into the suit were overruled by the Circuit Court and the report confirmed, the learned Circuit judge, after a careful examination of the evidence, saying: "I think the weight of proof shows that both these [rubber] companies believed that with the help they were about to give Fargo & Co., that company would be able to weather the storm. I am therefore of the conclusion that there was no intentional fraud committed." And the court, holding the preferences constructively fraudulent, proceeded:

"What punishment should the court, in view of the character of fraud found against the Rubber Company, and the Candee Company and the Metropolitan National Bank, inflict upon them? * * * Candee & Company, the Rubber Company, and the Bank, would undoubtedly, in January or in August, have had the rightful power to have obtained the judgment notes actually taken. Had they taken judgment thereon, there can be no doubt but that their preference would have been sustained. The vice in the conduct of the Rubber Company and the Candee Company consisted in their attempting to tie up the corporation against the power to give like preferences in favor of others. It was, in a certain sense, a new attempt; it was in the line of efforts of creditors to secure themselves; it was, on the whole, not ungenerous to Fargo & Co.; and did not, considering their rights to have taken judgment notes, and the fact that none of the other creditors attempted to obtain such notes, or any other preference before the general crash, do any

actual injury to the other creditors. On the whole I think the interests of justice will be best subserved by placing them in a class with the other creditors and compelling them to pay the general costs of this litigation." (Opinion, Record, p. 636–A.)

Thereupon, the decree appealed from was entered, setting aside the above preferences as "fraudulent in law (though not at the time believed by the parties to be such, but, on the contrary, believed to have been within their rights) as against the other creditors of C. H. Fargo & Co." and directing the assets of Fargo & Co. (about $111,000) in the hands of the receiver to be distributed *pro rata* among said creditors of Fargo & Co., including petitioners. (Record, p. 639.)

The case being taken by appeal and cross-appeal to the Court of Appeals, Mr. Justice Brown, in a dissenting opinion, concurred with Judge Grosscup in holding that while the preferences were constructively fraudulent, the petitioners were entitled to share *pari passu* with the other creditors, saying:

"To make it actually fraudulent, such as to require the claims of those preferred creditors to be postponed to the claims of the general creditors, I think it should clearly appear either that the preferred claims were not *bona fide*, of which there is no pretense, or that the arrangement was entered into, not for the purpose of tiding the company over its immediate crisis, enabling it to continue business, and at the same time to secure the preferred creditors, but for the purpose of ultimately winding it up, and in the meantime of giving it credit and enabling it to purchase additional goods, which the preferred creditors would thereby be able to seize and subject to their own debts.

"I find no testimony to satisfy me that an actual fraud upon the general creditors was intended. The device of changing the directors was evidently not for the purpose of giving up control of the business, but only to

secure the arrangement that no other judgment notes should be given, and as a matter of fact the new directors did not interfere with the business of the company as conducted by the Fargos. Indeed, no meeting of directors was held after the change was made. No new creditors were induced to give credit to the company upon the faith of their continuing the business, as the evidence shows that with few exceptions the same persons were creditors in January and August. * * *

"Upon the whole, it does not seem to me that such a case of fraud is made out as authorizes the court to postpone the claims of the preferred creditors to those of the general creditors, and thereby practically to confiscate them; and that there is no sound reason for departing from the general rule laid down by the Supreme Court in *White* v. *Cotzhausen* (129 U. S., 329), and *Streeter* v. *Jefferson County Bank* (147 U. S., 36), wherein the preferred creditors were permitted, after their security had been set aside, to stand upon an equality with the general creditors. * * *

"The evidence satisfies me that there was a *bona fide* attempt to assist the Fargo Company in continuing its business, with the hope of ultimately pulling it through, and that if this attempt had been successful, it would have redounded greatly to the interest of the general creditors. It was natural, at least, that in making this attempt the rubber companies should have endeavored to secure themselves, not only for their immediate outlay of $50,000, but for their prior debts. In palliation of the secrecy, which was held to make this constructively fraudulent, it may be said that publicity doubtless would have destroyed the entire scheme of raising money to carry on the business."

The majority opinion of the Circuit Court of Appeals (Rec., pp. 717-734) certainly does not in terms—and we think does not intend to—overrule the master's findings of facts. True, that opinion does in one place say that "the rubber companies were guilty of fraud in fact," whereas the master's report finds "there was no fraud in fact or want of good faith," but that opinion also says:

"Questions of fraud in law and fraud in fact are in their natures separate, though not always distinguishable by clearly defined lines. In this case * * * no attempt will be made as we proceed to keep the distinction all the while in view."

And again, in commenting on the language of the master's report, "but not with a fraudulent intent as to the other creditors of the company," the opinion says:

"If, however, the master intended, as it seems probable he did intend, to find that the parties to the scheme had no conscious purpose to harm either present or future creditors, the finding cannot abrogate or restrict the application of that familiar rule, without which a coherent code of law or morals would be impossible, that men shall be deemed to intend the natural or probable consequences of their acts or conduct. * * * The inventors of the scheme were bound to apprehend its probable consequences."

And again:

"It was hoped—let us say it was believed—by all concerned that with that sum [$50,000], under the plan agreed upon, the company would be able to weather the storm."

And again:

"It was not, as alleged in the bill, a part of the plan that increased purchases should be made for the purpose of improving the security of the rubber companies."

I.

The Right to Pro-Rate.

From the foregoing and other expressions of the majority opinion of the Court of Appeals, it is clear that petitioners' preferences were set aside and their claims practically confiscated by the Court of Appeals, not because of the motives and purposes of the parties to

the preferential transactions, not because of any design or intent on their part to commit a wrong upon the other creditors of the Fargo Company, but because of the supposed injurious *effect* of the transaction as to other creditors—an effect which rendered it illegal *independent of the actual intentions of the parties.* The intention here made the basis of the court's decision against petitioners is an intention imputed to them *as a matter of law.* Such imputed intention would warrant a court in setting aside a peference, but would not justify it in inflicting punishment.

The court here disregards the distinction between actual and constructive fraud, which is recognized and defined by this court in

Neal v. *Clark*, 95 U. S., 704-9,

where, in construing the use of the word "fraud" in the bankrupt act Mr. Justice Harlan said:

"It means positive fraud, or fraud in fact, involving moral turpitude or intentional wrong * * * and not implied fraud, or fraud in law, which may exist without the imputation of bad faith or immorality."

It therefore seems apparent that the learned judge in saying petitioners were guilty of fraud in fact did not—as indeed he disclaims intention to—keep in view the distinction between fraud in fact and fraud in law, and that he did not in so characterizing the conduct of petitioners intend to overrule the master's finding that they were guilty of no *intentional* wrong to the other creditors. Had he intended to overrule the master the learned judge would doubtless have left no ambiguity in the opinion upon this point, especially in view of the rule frequently laid down by this court that the master's

findings shall, on appeal, be accepted as presumptively correct unless shown to be clearly wrong.

Tilghman v. *Proctor*, 125 U. S., 136–149.
Callaghan v. *Myers*, 128 U. S., 617-666.
Crawford v. *Neal*, 144 U. S., 585–596.
Furber v. *Ferris*, 145 U. S., 132.
Warren v. *Keep*, 155 U. S., 265.
Davis v. *Schwartz*, 155 U. S., 631-636.

Without in this application entering upon an argument in support of the master's report, it is safe to assume that did that report contain "any serious or important mistake" upon the evidence, it would not have been approved by Judge Grosscup or accepted by Mr. Justice Brown.

But, in truth—except as to certain subsequent representations claimed to have been made to two creditors by the Fargos, which cannot be proof of intentional wrong by petitioners, because they neither participated in nor knew of them—*there is no conflict of evidence in this case.* True, the inference of motives to be drawn from the uncontradicted evidence are a matter of controversy between counsel, but this is not very material, as none of the judges of the lower courts deduced from the evidence an *intention* or "conscious purpose" of petitioners to commit a wrong against the other creditors. Hence the second question above stated is in effect whether this undisputed evidence shows such conduct—concededly wanting in "conscious purpose" to wrong the other creditors—as should preclude the petitioners from participation in the *pro rata* distribution of the Fargo & Co. estate. This would seem to be a question of law.

It is submitted, in support of the application for the writ of *certiorari*, that not only is this question one which, in view of the diversity of views of the judges below, ought to be finally decided by this court, but that upon reason and authority under the decisions of this court the action of the Circuit Court of Appeals was wrong in denying, and Mr. Justice Brown and Judge Grosscup were right in upholding, the petitioners' right to pro rate with the other creditors.

In *Streeter* v. *Jefferson Bank*, 147 U. S., 36, a creditor of a bankrupt who had obtained a preference which this court adjudged illegal within the purview of the bankrupt act, was held not precluded thereby from proving his debt and sharing in the distribution of the bankrupt's estate.

In *White* v. *Cotzhausen*, 129 U. S., 329, this court, in setting aside, as contrary to the Illinois Voluntary Assignment Act, a conveyance by way of preference, held such transferees not debarred from participation in distribution, saying that:

"So far as the record discloses, they only sought to obtain a preference over the other creditors. But their attempt to gain such illegal preference ought not to have the effect of depriving them of their interest, under the statute, in the proceeds of the property in question."

In *Brown* v. *Morristown Store Company*, 42 S. W., 161 (Tenn., 1897), where the court set aside as an illegal preference a sale by a corporation to its treasurer of its assets in payment of its debt to him, the court said:

"We do not think the position taken by the general creditors under this writ of error, that Holston (the preferred creditor) is not entitled to participate as a creditor in the distribution of the assets of the corporation, is well taken. Resistance to the evidence of the sale to

him on the ground of its illegality does not debar him as a creditor or destroy his debt. * * * The effect of avoiding a sale in a case of this kind is, as we understand the law, to place the property of the corporation, as a trust fund, under the control of the court for equal distribution among all its creditors."

See, also, to like effect,

Comer v. *Tabler*, 44 Fed., 467.
In re Reed, 3 Fed. Rep., 798.
In re Cadwell, 17 Fed. Rep., 693.
Phelps v. *Curts*, 80 Ill., 109.
Lobstein v. *Lehn*, 120 Ill., 549.
Riggs v. *Murray*, 2 John. Ch., 565.

Why does not the principle of these cases apply to these petitioners? They have only made an unsuccessful attempt to secure perferences. Their *motive* in seeking a preference is, in Illinois, recognized as legitimate. If unsuccessful, it is not because they have sought what the law inhibits, but because, under legal advice, without intention to wrong the other creditors, they have adopted a *method* which the law will not sanction.

If, as intimated in *Clements* v. *Moore*, 6 Wall., 312, each case is to be decided—not by an inflexible rule—but according to its own circumstances, upon what ground can the rubber companies be fairly denied the right to pro rate? A corporation, of which they were the largest creditors became embarrassed and its officers desired to overcome—as they had a right to attempt to do (*Sanford Tool Company* v. *Howe*, 157 U. S., 312)—the difficulties which they regarded as but temporary. The rubber companies were willing to aid by advancing $50,000, if the Fargo Company would—as it lawfully might—(*Sanford Tool Co.* case, *supra*)—secure their existing

debts, and an arrangement was concluded under which the Fargo Company procured $50,000 of new money to be "used in reduction of its general indebtedness as it matured" (Master's report, p. 161), and was thus enabled for seven months to continue its struggle for business life. During this time its business was carried on as before and it "paid to general creditors in the regular course of business more than $300,000, paying all of the indebtedness of January 6, 1896, which was largely to the persons who are now creditors." During this time its indebtedness to its general creditors was materially reduced, while its debts to the rubber companies were reduced but a few thousand dollars.

It is not denied that in January, Fargo & Co. could lawfully have given, and the Rubber Companies could lawfully have taken, by way of preference, judgment notes to be immediately entered. Thus these general creditors considered collectively, as they should be, were better off under the arrangement than they would have been had it not been made, but in lieu thereof an arrangement for immediate cessation of business and preference had been entered into. For had the January arrangement fulfilled the expectations which the master finds were entertained by the parties to it (Rec., 164), and the Company had tided over its difficulties, all creditors would have been paid in full and these respondents would have profited by it as much as the petitioners. Is there in all this any reason why the Rubber Companies should be punished by the "practical confiscation" of their claims? Nor does the change in the directory justify such punishment, as this also was, as the master finds, without fraudulent intent.

How stands it as to the Metropolitan National Bank?

It was a stranger to the preferential arrangements in controversy until August 3, 1896, at which time Fargo & Co. was indebted to it $40,000 for borrowed money. At the same time two of the Fargos were indebted to a Michigan Bank upon a $10,000 note which had been previously given by them (with their individual bank stock as collateral security) to borrow that sum for C. H. Fargo & Co.

While in form this $10,000 was a debt of the Fargos as individuals, in equity and in reality it was a debt of the company to the Michigan bank, as will be shown later. If so, no one disputes that the company, although on the eve of failure, might have preferred the debt of $40,000 to the Metropolitan National Bank and the note for $10,000 of the Michigan bank. Yet this is in substance what was done when C. H. Fargo & Co. gave to the Metropolitan National Bank two preferential judgment notes aggregating the amount of its $40,000 note and the $10,000 Michigan bank note, and the $10,000 was furnished by the Metropolitan National Bank to Charles E. Fargo to pay the Michigan bank.

But if the Michigan bank note be regarded in law as a debt of the Fargo brothers, instead of their company, still the undisputed fact remains that they had borrowed this money for their company, and the company, at least, was indebted to them in that amount; so that at the worst the transaction amounts but to an unsuccessful attempt by the Fargos to obtain from their company, on the eve of its failure, a preferential payment of a debt honestly due by it to them. But the unsuccessful attempt even of a director to secure a preference from his company upon the eve of its failure does not work a forfeiture of his debt (*Brown* v. *Morristown Store Company*, *supra*).

But it is said by the Circuit Court of Appeals that, if no other valid reason exists for depriving the bank, not only of its preference but of its debt, one is to be found in what is termed the "entangling alliance" into which it entered with the Rubber Companies. What is here meant is that on August 6th and about the time the bank received its judgment note it entered into an agreement (Rec., p. 385) with the Rubber Companies, who also had judgment notes, "to unite their efforts to collect their respective claims against the said company and share *pro rata* in the results thereof." The only purpose of this, as the evidence shows, was to avoid conflicts respecting the priority of the respective executions, the Rubber Companies being about to enter their judgments in the Federal court, while the bank was obliged, and about, to resort to the State court.

However the conduct of the rubber companies before August 6th may be characterized, their conduct on and after that date—and it is in this only that the bank can be said to have participated—was but the assertion of a preference now said to be illegal. This, as already shown, is not sufficient to deprive even the rubber companies of the debts they sought to have preferred. How then can it deprive the bank of *its* debt?

It is difficult to appreciate how this pro-rating agreement can affect the rights of either the rubber companies or the bank. No penalty or punishment attaches to the legal assertion of claims. If either of petitioners is to be debarred from sharing with the other creditors in the general fund, it must be because its conduct has been intentionally injurious to creditors. How did this agreement, made on the day of failure, work a legal injury to such creditors? It did not, unless

the mere assertion as valid of preferences which were, *as a matter of law*, invalid, is a legal wrong. Under the foregoing cases it is not.

Hence a majority of the Circuit Court of Appeals erred in holding that petitioners were not entitled to share *pari passu* with the other creditors.

II.

There Is No Constructive Fraud.

The decision of the lower courts against the petitioners on this question cannot, it is believed, be reconciled with that of this court in *Sanford Tool Co.* v. *Howe*, 157 U. S., 312.

In the discussion of this question the following legal propositions are not questioned by the lower courts or respondents' counsel:

(1) These preferences, made in Illinois by a corporation of that state, are to be tested by the law of Illinois so far as declared.

Peters v. *Bain*, 133 U. S., 670.
Allen v. *Massey*, 17 Wall., 351.
Smith Purifier Co. v. *McGroarty*, 136 U. S., 237.

(2) The right of an individual debtor on the eve of failure to prefer one creditor to the exclusion of others exists in Illinois to its fullest extent.

Tomlinson v. *Matthews*, 98 Ill., 178.

elected at Beale's nomination should not hamper or interfere with the proper carrying on of the ordinary business of the company"; that "the only purpose and object of changing the board of directors as aforesaid, and amending the by-laws [by vesting in the directory the exclusive power to give judgment notes, etc.], was to protect the Rubber Companies against the giving by the Fargo Company of preferential security or judgment notes, which should be superior to the security of the Rubber Companies"; that "the arrangement as made was carried out in good faith by the parties, and that the directors elected, at the suggestion of Mr. Beale, took no part in the active management of the Fargo Company after their election; and, that no directors' meetings of Fargo & Co. were held after January 9, 1896, until August 5, 1896." These findings of the master are not controverted by the lower courts. Mr. Justice BROWN says (Rec., 736): "The device of changing the directors was only to secure the arrangement that no other judgment notes should be given." The evidence is undisputed that after the election of these directors, as well as before, the business of Fargo & Co. was managed and conducted by the three Fargos in the interest of the company and to the advantage of its creditors generally. (Rec., 162.)

Furthermore, no injury to the creditors from this change of directors is shown. It does not appear that the Fargos, during this period, wished or were willing to prefer any of the other creditors, except the Metropolitan National Bank. When, in August, they desired to prefer that bank the new directory by a resolution authorized it; and, as stated by the learned Circuit Judge (Rec., 636 B.), "none of the other creditors

attempted to obtain such [judgment] notes or any other preference before the general crash" and the arrangement "did not do any actual injury to the other creditors."

What then is here disclosed is simply an agreement made by a "going" corporation that the security (through which a new loan was obtained with which to continue business and overcome embarrassments) should not be impaired by, or made secondary to, preferential judgments to other creditors; a change of directors *solely for the purpose of assuring the performance of this agreement;* and the absence of any actual injury resulting therefrom to the company's other creditors.

The question thus presented is whether this change of directors for the purpose and to the extent above indicated is constructively fraudulent when made in good faith and without actual fraud.

The first question here is whether this change of directors was *per se* fraudulent regardless of the motive or purpose. In Illinois the right to elect directors is vested exclusively in the stockholders, whose motives the law does not concern itself with. They may act arbitrarily or from pure whim or fancy. They certainly may elect directors with a view to inspire in those with whom the company deals a confidence that its contracts will be fulfilled. They may—and frequently do—elect such directors as those dealing with the company nominate or suggest.

In *Kitchen* v. *R. R. Co.*, 69 Mo., 224 (page 242), an agreement that capitalists about to advance money to an embarrassed railroad company should have a "controlling voice in the directory in order that the money

"furnished might be thus [as agreed] applied and result "in giving them ample security for their investment," was held not constructively fraudulent.

Having this exclusive power of selection, the stockholders of a corporation can, in their discretion, select as its directors some of its creditors. There is no inconsistency in one's being at once a creditor and a director. The law permits a director to deal with his company and thereby become its creditor.

Harts v. *Brown*, 77 Ill., 226.

Why may not, then, a creditor become a director if the stockholders wish it? Even if these rubber corporations had been partnerships and five members of such firms had been elected directors, this would have infringed no right of creditors.

But the persons elected directors were not themselves creditors. They were clerks in the office of the counsel of the Rubber Companies, one being also assistant corporation counsel of the City of Chicago, and they were elected by a unanimous vote of the stockholders. It is not claimed that they were not, by character and capacity, qualified to be upright and intelligent directors; nor is there any evidence that they were, or were expected to be, improperly influenced in discharging their duties as directors by this relationship to the attorney of the Rubber Companies. At most it only gave the attorney a certain moral influence.

But such moral influence, even in the case of stockholders whose votes elect the directors, is neither illegal nor justifies the charge that the directors are "controlled" in any improper sense by those who elect them.

Porter v. *Pittsburg Bessemer Steel Co.*, 120 U. S., 649.

Pullman Palace Car Co. v. *Missouri Pacific*, 115 U. S., 587, 596.
Higgins v. *Lansing*, 154 Ill., 301, at page 357.

Nor will the law assume, in the absence of proof, that these directors—although elected upon the nomination of Mr. Beale—were to, or would, as directors, act illegally or fraudulently.

Allen v. *Wilson*, 28 F. R., 677.
Rogers v. *Nashville Ry. Co.*, 91 F. R., 299, at page 313

Clearly, then, the creditors of Fargo & Co. could not, in January, 1896, have induced any court to interfere with, and cannot now complain of, the mere selection, by its stockholders, of Mr. Beale's nominees as directors. It being lawful for stockholders to select them, it was not unlawful to *agree* to do so. Hence neither the agreement to elect nor the election of these directors constituted in *itself* a legal fraud.

Not that the selection of directors may not be a part of a fraudulent transaction. In such case, however, it must be a means to a fraudulent end. There the fraud arises—not from the fact of such selection—but from its purpose or object. As the "only purpose and object" of this change of directors was to carry out the company's agreement not to give their other creditors a superior preference, the real question is whether such an *agreement* is a fraud on its other creditors. If so, a preferential transaction containing such agreement would be illegal, although it did not provide for a change of directors. If it was not illegal, the change of directors would not make it so.

While all the learned judges in the lower courts seem to have regarded the change of directors as an element of fraud, the opinion of but one (Judge Grosscup) states the reasons therefor. In his opinion on the final hearing (Rec., p. 636 a) he says:

"The vice in the conduct of the Rubber Companies and the Candee Company consists in their attempting to tie up the corporation against the power to give like preferences in favor of others."

(See also his opinion on interlocutory hearing. Rec., p. 84.)

The supposed vice, then, when this transaction is fundamentally considered, must be, not the change of directors, but the agreement or purpose of the parties to restrict Fargo & Co.'s power to prefer other creditors. The question then is not confined, as the learned judges seem to think, to corporations, but concerns individuals as well. A corporation's right to prefer creditors (other than directors) is similar to that of an individual. Hence the creditors of an individual are as much wronged as are the creditors of a corporation by an agreement or other pre-arranged purpose to "tie up" their debtor's power to prefer them.

Hence the real question is whether an agreement or other arrangement by a debtor, either individual or corporation, that a preferential judgment note (in part securing a present loan) should not be impaired by subsequent preferences to others, is a fraud or wrong upon creditors. If so, it must be—since every wrong implies the existence of a right—because it infringes some *right* of the creditors.

What right of creditors, then, is here infringed? This involves the consideration of what, and whose, is this

right to prefer. Property includes the right to dispose of (as well as use) the thing possessed. This right to transfer includes the right of the debtor to assign his property to his creditor in payment of or as security for, his debt. This latter right—commonly known as the right to prefer—continues so long as the owner retains dominion over his property. It is subject to but two limitations—the right of the state to provide by bankrupt or insolvent laws for the ratable distribution of an insolvent's estate, and a limitation prohibiting conveyances by him with the intent to hinder, delay or defraud creditors. Subject to these two limitations—well established long prior to the adoption of the Federal or any state constitution—this right to prefer is as completely within the constitutional guarantee of the right of property as any other property right.

This right to prefer, being based upon the *jus disponendi* which the owner of property retains so long as his ownership continues, precludes the idea that a debtor's creditors have any legal interest in its exercise. The right is personal to the debtor. It is exclusively his. He may exercise it or not, as his caprice or fancy suggests. His motives cannot be inquired into. He may exercise it as to all, or a part of the property, at any time he sees fit, and in favor of any one, even the least meritorious of his creditors. If the debt be *bona fide* he may exercise it when, as, and so far as, he pleases. His exercise of it, or his failure to exercise it, or his exercise of it in a particular way, infringes no right of his creditors.

Is it not then illogical to say that a debtor, who may prefer or not, as he pleases, may not, especially to obtain a loan, voluntarily submit to a self-imposed restriction

upon his future power to prefer; or may not stipulate for the order of priority of his preferences—which is all Fargo & Co. did in this case?

He may by non-action, or by making an actual transfer of all his property to one creditor, or by giving one judgment note of sufficient size to absorb his entire assets and afterwards refrain from giving other notes, prefer exclusively one creditor. So by the actual exercise of his power to prefer (in point of time or otherwise) he may in fact lawfully create such order of priority in his preferences as he sees fit. If so, how is it unlawful for him to *agree* to do so?

If it infringes the right of creditors "to tie up" the debtor's right to prefer, then an agreement by a debtor with a creditor to give no preferences *at all* in case of subsequent failure would be equally illegal. All this is repugnant to the very nature of the right to prefer. It belongs to the debtor. The creditors have no legal interest in it whatever.

Again, the position of the lower courts on this point is based upon the right of creditors to have this power to prefer kept free and untrammeled. If such right exists it involves—in the case of a corporation—a correlative duty of its directors. If the law is to protect creditors in this right, it must, especially in equity, which looks at substance rather than form, condemn everything—whether agreement or other arrangement—that destroys it. Self interest is the strongest motive of human conduct. In the case of directors it is at least as potent as the sense of obligation arising from the contracts of their company. If its creditors have this right, they must be allowed to insist that directors—from whom their preferences must emanate—should not, in dealing with

their corporation, place themselves in a position where their self-interest will conflict with this duty to creditors.

Such is human nature that no corporation will often give a preference to others that impairs previous preferences to a majority of its directors. Here is a situation arising from self interest that is as potent "to tie the hands of the corporation against the power to give like preferences in favor or others" as would be an agreement of the corporation. If one is fraudulent because depriving creditors of a right, equity must also condemn the other.

Hence, this new theory, if it be engrafted upon the law, must be carried to a logical conclusion, by annulling all undisclosed preferences to directors, especially to a majority of the directors.

But this is directly inconsistent with the decision of this court in *Sanford Tool Co.* v. *Howe*, 157 U. S., 312, and of the Illinois Supreme Court in *Illinois Steel Co.* v. *O'Donnell*, 156 Ill., 624.

In the former case an insolvent corporation gave to a *majority* of its directors a mortgage upon its manufacturing plant, which, although kept off the records for two months, was upheld. Here, then, was the creation of a situation which was as effectual, as any agreement of the corporation would have been, to prevent the company from giving other preferences upon this plant.

In the *O'Donnell* case a judgment note given by an insolvent corporation to *three of its five* directors, of sufficient size to absorb its assets to the exclusion of its general creditors, was upheld, although undisclosed for eight months, during which time the corporation conducted its business and obtained credit.

(3) An Illinois corporation, although insolvent and contemplating ceasing business, has the same right as an individual to prefer creditors other than directors.

Reichwald v. *Commercial Hotel Co.*, 106 Ill., 451.

Gottlieb v. *Miller*, 154 Ill., 44.

Glover v. *Lee*, 140 Ill., 102.

Warren v. *First National Bank*, 149 Ill., 9.

(4) An Illinois corporation if contemplating the continuance of its business may, although insolvent, give judgment notes to its directors for a present loan of money.

Illinois Steel Co. v. *O'Donnell*, 156 Ill., 624.

Whether such corporation could give a preference in part covering a pre-existing debt and in part for money advanced to aid the company to continue its business has not yet been distinctly decided by the Illinois court. In the absence, however, of such decision that of this court in *Sanford Tool Co.* v. *Howe*, 157 U. S., 312, upholding such preference *in toto*, would control.

(5) Debts for which the directors are liable as endorsers, etc., may be preferred by an Illinois corporation on the eve of its failure.

Blair v. *Illinois Steel Co.*, 159 Ill., 350.

Rockford Co. v. *Standard Co.*, 175 Ill., 89.

(6) Directors may be even relatives of the preferred creditors without invalidating the preference.

Ragland v. *McFall*, 137 Ill., 81.

Illinois Steel Co. v. *O'Donnell*, 156 Ill., 624.

(7) The giving of judgment notes is recognized in Illinois as a legitimate method of preference.

Field v. *Ridgely*, 116 Ill., 424.

Hegeler v. *First National Bank of Peru*, 129 Ill., 157.

In the light of these undisputed legal principles, it is proposed now to examine separately the preferences to the Rubber Companies and the Metropolitan National Bank.

First as to the Rubber Companies. It is to be noted at the outset that the rule prohibiting the directors from preferring themselves when contemplating a cessation of business has no application. The preferences of the Rubber Companies are not of this character. In granting such preferences Fargo & Co. and the Rubber Companies dealt at arm's length. None of its directors or officers were then either directly or indirectly connected with the Rubber Companies. Their preferences were not a result of the election of the directors nominated by Mr. Beale. On the contrary, the election of such *new* directors was the result of the contract for preferences previously made by Fargo & Co. through its old directors. The new directors by no vote or act contributed to, or participated in, the giving of these preferences. Besides they were given when Fargo & Co. was a going concern and not contemplating failure.

This is equally true of the assignment of the accounts. While the actual assignment thereof was not made until August 6, it was then made by the president, Charles E. Fargo, acting in obedience to a resolution passed by the old directors on January 6. The new directors did not participate in it. This conditional promise to assign

was valid (*Smith* v. *Craft*, 17 Fed., 705; *Feekheimer* v. *Baum*, 43 Fed., 719; *Natl. Bank* v. *Whitmore*, 104 N. Y., 297), and its performance in August would relate back to the promise in January.

National Bank v. *Whitmore*, 104 N. Y., 297.

Clerk v. *Iselin*, 21 Wall., 360.

Haslet v. *Harrison*, 105 U. S., 401.

South Branch Co. v *Ott*, 142 U. S., 622.

Douglass v *Vogeler*, 6 Fed. Rep., 53.

In view of the foregoing cases it seems to be conceded by the lower courts that the preferences to the Rubber Companies, without the element of secrecy and the provision for change of directors would be valid. They held, however, that the element of secrecy, either by itself or accompanying the change of directors made constructively fraudulent such preferences.

Judge Grosscup, in his first opinion (Rec., 86), concedes "that the judgment notes themselves would not have been a fraud in law; the assignment of the accounts or the plant at Dixon would not have been of themselves a fraud in law," but that accompanied by the change of directors they were constructively fraudulent. The opinion of Judge Woods lays stress upon the intentional maintenance of secrecy as fraudulent.

SECRECY AS AN ELEMENT OF FRAUD IN PREFERENCES.

On this point the master found as follows:

"The matter was kept secret in order to allow Fargo & Co. an opportunity of getting through embarrassments apparently temporary, but not with a fraudulent intent as to the other creditors of the company."

This finding is amply sustained by the evidence, and we do not understand that its correctness is questioned by

the majority opinion of the Circuit Court of Appeals. The only conceivable *fraudulent* intent or motive in keeping the matter secret would be to thereby purchase goods on credit to subsequently levy upon, but this opinion says:

"It was not, as alleged in the bill, a part of the plan that increased purchases should be made for the pupose of improving the security of the Rubber Companies."

It is not claimed that there was any agreement for secrecy, but Judge Woods says:

"The master's finding on the point implies, and the evidence demonstrates, a *mutual understanding* between those concerned that secrecy was necessary, and an express agreement that it should be kept would not have made the understanding more clear or its fulfillment more imperative. * * * Secrecy kept for a purpose is not accidental or unintended; it is premeditated; it is in essence the same as if agreed upon."

Thus the learned judge seems to assert that in Illinois *intentional* secrecy in itself renders a preference fraudulent; that secrecy kept for apurpose—however commendable that purpose—avoids a preference; that intentional secrecy, although solely for the purpose of enabling a corporation to get "through embarrassments apparently temporary," is wrongful.

Whatever be the decision in other states—and in them there is some conflict and confusion—it is certainly beyond question that in Illinois intentional secrecy in a preference, although followed by the giving of credit which, without it would have been withheld, is not a fraud on the creditors unless the *motive* is fraudulent. A preferential agreement kept secret with a legitimate motive, or for a legitimate purpose, is not fraudulent because it *results* in the giving of credit that would otherwise have been withheld. The policy of the law in Illinois is firmly

settled. It recognizes the right (as does this court in *Sanford Tool Company* v. *Howe*, *supra*) of an embarrassed debtor, whether individual or corporation, to struggle to outlive financial embarrassment. It appreciates that this struggle requires the continuance of purchases on credit. It recognizes the right of such a debtor to give judgment notes, and does not require such judgment notes (as it does mortgages) to be recorded, nor provide by statute for any public notice thereof. It exacts of an embarrassed company no unsought disclosure of its outstanding judgment notes. It imposes upon the creditor the duty of inquiry from his debtor. It condemns the keeping secret of judgment notes, where the purpose is to increase the assets to levy upon, for here the *intention* is wrongful. But it upholds judgment notes intentionally kept secret, although followed by purchases on credit, where the purpose is honest—the continuance of the business in the expectation of outliving embarrassments. The test in Illinois is not whether the secrecy is intentional or not, but whether the purpose of the secrecy is honest or dishonest. To hold otherwise would be to practically inhibit the giving of judgment notes—a favorite form of security in Illinois. If, as seems to be the case, the position of the majority of the Circuit Court of Appeals is that secrecy kept for the purpose of enabling Fargo & Co. to outlive embarrassments is fraudulent, because it permitted a credit which was undeserved, it is opposed to the Illinois law, which is sufficiently disclosed by the two following cases:

In *Hegeler* v. *First National Bank of Peru*, 129 Ill., 157, the facts and contentions of the attacking creditors, except in the feature of the change of directors, were strikingly like those in the case at bar. A corporation be-

came insolvent and offered to secure a debt to its bank by mortgage, but this "the bank refused, *because it would injure the credit of the glass company and prevent it from obtaining elsewhere further credit*," and in lieu thereof the bank took from the corporation judgment notes for its indebtedness. *Here was a clear case of intentional secrecy to avoid injury to credit.* These notes were retained without the entry of judgment thereon *for more than a year.* The corporation during this time continued its business, and the attacking creditors advanced the corporation money upon false statements by it of its financial condition, and, it was claimed, "upon the delusive and fictitious credit given it by said First National Bank of Peru [the preferred creditor], in allowing it to retain all its property apparently free from incumbrance," and that, had the attacking creditors "known or suspected the existence of such judgment notes, they would have given no credit or loan whatever to such glass company"; and that "such concealment enabled the debtor to deceive and mislead other persons to give it credit that would otherwise have been withheld." But the court upheld the preferential judgment, saying, at page 163:

"The argument proceeds throughout upon the proposition that the bank took its notes and held them under circumstances that made its conduct operate as a fraud upon others. There is no pretense that there was any agreement to conceal its claim against the glass company, much less that any such agreement was made for the purpose of enabling the company to obtain credit from others. No evidence can be found in the record proving, or tending to prove, acts or declarations on the part of appellee calculated to induce appellant to give credit to the glass company. There is nothing in the bill, and certainly nothing in the evidence, to show that at the time appellee took its notes, and refused to take mortgage security, it did not honestly believe that, notwithstand-

ing the insolvency of the glass company, it would, if its credit could be maintained, successfully recover from its embarrassment, continue business, and pay all its debts."

In *Field* v. *Ridgley*, 116 Ills., 424, a firm, being largely in arrears to a creditor, executed to him judgment notes and thereafter continued as before to conduct an extensive mercantile business on credit *for four years*, when it failed. Judgments entered on these judgment notes were attacked as a fraud on creditors in that they had been induced to sell goods to the firm when "insolvent," a fact known to the judgment creditor, but not to the attacking creditors; but the court upheld the preference, saying, at page 431:

"The acts of fraud relied on * * * are no evidence of fraud at all. * * *

"As to the complaint that appellees held the notes so long without giving notice of their having them, we perceive no force in it. There is no law or mercantile usage, so far as we are advised, that requires one in business to disclose the state of his accounts with his customers to others having dealings with them, and there are manifest reasons why this should not be done except when the creditor is specially interrogated on the subject by one having a personal interest in knowing. It is not charged in this case that appellants ever sought any information of appellees [judgment creditors] in respect to the claims of the latter against Kimber, Ragsdale & Co., or that they ever said or did anything, outside of what we have already stated, to mislead appellants with respect to Kimber, Ragsdale & Co.'s indebtedness to appellees, or in respect to the manner in which such indebtedness was secured. The forbearance of a creditor to crush out a struggling debtor upon the first opportunity, with a view of enabling him to overcome business misfortunes, ought not to be converted by judicial construction into a species of fraud. On the contrary, so long as the creditor's conduct is characterized by good faith, as was evidently the case here, such forbearance should be regarded by the courts with favor, rather than otherwise."

It is here worthy of note that Judge Grosscup, himself an Illinois lawyer of large experience at the bar, concedes that the giving of judgment notes to the Rubber Companies, although accompanied by intentional secrecy and followed by the giving of credit which, with a knowledge of the facts, would have been withheld, would not be fraudulent under the Illinois law, if it had not been accompanied by a change of directors.

What is here said of secrecy concerning judgment notes is equally true of the secrecy respecting the change of directors. The law of Illinois does not require public notice of the election or change of directors. Creditors are left to ascertain by inquiry, if to their interest to do so, the personnel of the directory. Here, too, while the law does not permit false answers to inquiries, it does not require unsought disclosures. In either case it is the intention or purpose which determines whether secrecy makes the preferential transaction fraudulent or not.

As secrecy here was concededly for a legitimate purpose, the decision of the Circuit Court of Appeals in so far as it avoids on this grounds these preferences was repugnant to the Illinois law.

Did the change of directors make the preferences to the Rubber Companies constructively fraudulent?

The facts concerning this are as follows:

The Fargo Company, in the January arrangement resulting in the loan of $50,000, agreed "that it should not give any judgment notes to other creditors which would impair the security of the Rubber Companies"; that five of the then directors should resign and the stockholders should elect five new directors, to be nominated by Mr. Beale, and "that the directors so to be

That case, in principle, should control the case at bar. The agreement here, supplemented by the election of directors from the office of the Rubber Companies' counsel, did not create one iota more of "inability" by the corporation to subsequently "give like preferences" than existed in the *O'Donnell* case. This inability in either case arose from the constituency of the board of directors, supplemented in the one case by an agreement, and in the other by self-interest. Had the Rubber Companies been firms, and had five of their members been elected directors instead of the clerks from their counsel's office, this agreement would have added nothing to the situation. Their self-interest would have been sufficient. In that event this case would have differed from the *O'Donnell* case only in that the interested directors in the latter case were elected before the preferences were given, and in the present case afterwards. The supposed unlawful result, however, would be the same. So, too, the case at bar is, in principle, like the *O'Donnell* case, despite the fact that in the former the condemned result proceeds in part from an agreement, and in the latter only from the self-interest of directors.

This position of the lower court is equally at variance with the principle of all the cases which sustain an undisclosed preference to a single director. For if creditors of a corporation are entitled to the unbaised and free exercise of the right to prefer, this is impaired (although in lesser degree) when *one* director is preferred. For that one director will not vote for any preference which will impair his preference.

It is therefore respectfully urged that the change of directors did not make these preferences fraudulent.

It is said in the majority opinion of the Court of Ap-

peals to be a fraud upon the law to constitute the directors and treasurer "pledged not to give attention to their duties, or to participate in the management of the business of the corporation."

As applied to the *directors* there is nothing in this record to sustain the charge that they were pledged not to give attention to their duties. All that it shows is an agreement (see master's report) that the directors "should not hamper or interfere with the proper carrying on of the ordinary business of the company." Nor is there evidence that these directors did in fact fail to give attention to their duties. All that the evidence discloses is that they "took no part in the *active management* of the company after their election." (Master's report.) This constituted no omission to discharge their duties.

The Illinois Incorporation Act (Ill. Revised Statutes, Chapter 32, Section 6) provides that "the *corporate powers* shall be exercised by a board of directors or managers." Thus the duties of the directors involve only the exercise of corporate powers, and no court in Illinois has ever held or even suggested that participation in the active management of the ordinary business of a trading corporation is a corporate power, or that a director who does not do it fails in his duty to his company. According to the universal course of corporate business in Illinois, directors fully meet the requirements of their office when they select the officers and agents to conduct the company's business.

As applied to the *treasurer*, the legal proposition above stated does not arise in this case, because the fact upon which it is based is not presented by this record. The bill nowhere charges as an element of the fraud that the

treasurer of this company was pledged to neglect his duties or failed to participate in the management of the company's business. The master, in finding the facts and what the agreement of the parties was, omits to find any such pledge or agreement or any such conduct by the treasurer. This omission in the master's report was not made a basis of any exception. The master's report, except as to the points excepted to, became final by the confirmation of the Circuit Court. Hence this alleged fact was not before the Court of Appeals. Any reference to the evidence, therefore, is inappropriate here, and the Court of Appeals erred in making—if it intended to—any such alleged pledge or agreement or conduct a ground of its decision.

As to the Metropolitan National Bank. Was its preference constructively fraudulent? The bank did not appear upon the scene until about the 3rd of August, at which time Fargo & Co. was indebted to it on promissory notes for $40,000 for money borrowed in the regular course of business. It was never in any way connected with or represented on the directory of Fargo & Co. Hence, under the Illinois law, it had the undoubted right to accept from that company, upon the eve of its failure, a preferential judgment note for the amount of its claim.

Upon the representation of one of the Fargos that a Michigan bank held a note of himself and his brother for $10,000, borrowed for the Fargo Co., and that he desired $10,000 from the bank to pay that note and release his individual collateral (the truth of which is not disputed in the evidence), the bank loaned him $10,000 and took two judgment notes of the Fargo Company for $25,000 each, representing its existing claim for $40,000 and the new loan of $10,000.

One of these notes the parties undertook to pay by the transfer of Fargo & Co.'s factory at Dixon, and the other is the one upon which the judgment above referred to was entered in favor of this bank.

If the bank's preference is constructively fraudulent, it must be because it is made so by this $10,000 transaction. It is not thus made so unless this $10,000 was either (1) a misappropriation of corporate funds or (2) an illegal preference of a corporate debt. As there is no evidence to disprove the statement of C. H. Fargo that the $10,000 borrowed from the Michigan bank was used in the business of the Fargo Company, there is no warrant for saying that the receipt by Mr. Fargo of this money was a fraudulent withdrawal of corporate funds. The Fargo Company by this transaction was at least a debtor to the Fargo brothers in the sum of $10,000, and at most the receipt of this money by Mr. Fargo was but a preferential payment by Fargo & Co. to two of its directors on the eve of its failure.

But if in legal contemplation the note of the Michigan bank, while in form that of the individuals, was in reality and in equity that of the Fargo Company, then its payment, although on the eve of failure, was allowed by the Illinois law, and cannot be condemned as an illegal preference, although two of the directors, by reason of the pledge of their individual stock as collateral thereto, occupied with reference to that note a position akin to that of indorsers. (See cases above cited).

The Fargo Company, having thus the right to prefer its debt to the Michigan bank, might legally prefer a note given to the Metropolitan Bank to raise money to pay the Michigan bank. This is but a substitution of

one debtor for another, either of which could be legally preferred upon the eve of its failure.

Was then this note made by the Fargo brothers to the Michigan bank in legal contemplation the debt of the Fargo Company? We claim it is upon principle and upon the authority of

Poole v. *West Point Association*, 30 Fed. Rep., 513,

the facts of which are as follows:

The West Point Butter and Cheese Association was a corporation organized under the laws of the State of Nebraska, and one D. B. Brown was its president. The Middleton bank had advanced moneys directly to the corporation, and also advanced moneys to Brown, who had expended the same for the benefit of the corporation. These last advances the stockholders of the corporation had attempted to secure by pledging their shares of stock with the bank In an action by certain creditors of the West Point Butter and Cheese Association to dissolve the corporation, the receiver of said Middleton Bank was a cross-complainant, and as such sought to recover and charge said corporation with the moneys advanced by said bank to the corporation, and to Brown for its benefit, as debts of the corporation. It was held that equity would treat both sums as debts due by the corporation to the bank.

The court, Mr. Justice BREWER (page 518), said:

"I notice, second, the claim of the cross-complainant, the receiver of the Middleton Bank. His claim arises for moneys advanced by the bank directly to the association, and also for moneys advanced by it to Brown, which were by him expended for the benefit of the association, and which were recognized by the association informally as debts of the association, and which were attempted to

be secured by an assignment to the bank by each stockholder, personally, of his shares. *I think equity will jump all intermediate transactions, and treat both amounts as debts from the association to the cross-complainant.*"

It is therefore submitted that the Metropolitan National Bank's preference was not fraudulent.

For the reasons above stated the petitioners respectfully ask the issuance of a writ of *certiorari*.

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OCTOBER TERM, 1899, No. 436.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1899.

United States Rubber Co. et al., *Petitioners,*
vs.
American Oak Leather Co. et al.

Petition for Certiorari.
No. 436.

REPLY BRIEF ON MOTION FOR CERTIORARI.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1899.

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REPLY BRIEF ON MOTION FOR CERTIORARI.

Respondents' counsel seem to us to be in error, in their contention that the Act of Congress establishing Circuit Courts of Appeals contemplated that a question, to review which *certiorari* may issue, must be one that the Court of Appeals might certify, and that this court should not issue a writ of *certiorari* when the question was one of fact or of mixed law and fact.

As a question of *power* this is clear from the wording of the Act. For the Act expressly confines the right to certify to questions of law by providing (Sec. 6) that "the Circuit Court of Appeals at any time may certify to the Supreme Court of the United States any *questions or propositions of law* concerning which it desires the instruction of that court for its proper decision,"

thus adopting the rule by which this court, under the former statute, confined the right of the Circuit Court to certify in case of disagreement of judges to questions of law. When, however, the same section confers upon this court the power to bring up cases otherwise final in the Court of Appeals its language is most general:

"In any such case as is hereinbefore made final in the Circuit Court of Appeals it shall be competent for the Supreme Court to require, by *certiorari* or otherwise, *any such case* to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court."

This clause, as this court has well said, was intended to vest in this court a "comprehensive and unlimited power," and one which is "co-extensive with all possible necessities and sufficient to secure to this court a final control over the litigation in all the Courts of Appeal."

Forsyth v. *Hammond*, 166 U. S., 513-14.

Respecting the exercise—as distinguished from the existence—of the power to award *certiorari*, it may be generally true that when the writ is sought solely upon the ground of the importance of the question involved, such question should be one of law, as it is generally only such a question that can have any important bearing on the future administration of the law.

But where there arises an equal division of the judges of the lower courts upon a question, the writ ought to issue, not merely when necessary to settle the law for future litigants, but to award justice to the particular litigant in whose suit this division of judicial opinion occurs. In common law cases such division of opinion can ordinarily occur only upon questions of law, as contro-

verted questions of fact are not reviewable in the Court of Appeals. In chancery, however, the division of opinion may occur as well on a question of fact as of law, and when it occurs upon a question of fact, justice to the particular litigant calls for a decision thereof by this court as powerfully as if the division of opinion were upon a question of law.

But this discussion is not material here because a perusal of the opinions of the Court of Appeals will show that the question upon which the learned judges disagreed was not, as respondents' counsel claim, a question of fact.

All the judges in the lower courts concede that the petitioners, in taking their preferences, "had no conscious purpose to harm either present or future creditors." All concede the right of the debtor to prefer petitioners at the time these preferences were given. The preferences are condemned only because of the *method* in which the right of preference was exercised.

Hence, an essential question in the case was, whether a creditor attempting to take a preference at a time when, and in a state where, preferences were lawful, with *no purpose to harm either present or future creditors*, can be deprived of his debt because the method adopted to prefer is such as the law will not sanction.

This is purely a question of law. It involves no question of fact. It requires no resort to evidence. It arises on undisputed facts, on the face of the transaction itself. It is, moreover, a question of frequent recurrence and of grave importance to the business world.

Respondents' counsel claim the decision of this question turns upon whether or not there is fraud in fact. If this was so—which we deny—still the Court of Appeals'

opinion itself shows that petitioners were not in point of fact guilty of actual fraud, when that term is properly understood.

In respect to fraud in fact two questions arise: (1) What is fraud in fact? (2) Whether the evidence in the particular case shows this character of fraud? The second question is undoubtedly a question of fact, determinable at common law by a jury. The first question is clearly a question of law, which in a common law case it would be the province of the court to cover by instructions.

In the case at bar the learned judges did not disagree as to the facts of the transaction or as to the personal intentions of the parties, but they did disagree as to whether, in the absence of an intent to wrong other creditors, petitioners should be deprived of their claim.

If, as counsel contend, the judges here disagreed upon the question of fraud in fact, still their disagreement was not upon the facts, but upon the question whether, without a purpose or actual intent to wrong other creditors, there could be actual fraud. In other words, the point of disagreement in reality was upon the question, what, in a case of this character, constitutes actual fraud, the majority of these judges holding that it could exist without actual intent, and Mr. Justice Brown (concurring with Judge Grosscup) holding that it could not. Mr. Justice Brown adheres to the definition of actual fraud previously given by this court, and the two other learned judges—if respondents' counsel are right—apply a definition of actual fraud at variance with such decision.

Does actual fraud in the case of an attempt to prefer a *bona fide* debt require a conscious intent to wrong other

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creditors? Can it be predicated upon a transaction consisting of acts innocent in themselves, and where there was no wrongful purpose? This is in no sense a question of fact or of mixed law and fact. It is a pure question of law.

Furthermore, it will be noted that the majority opinion nowhere characterizes the action of the Metropolitan National Bank as actual fraud, nor negatives the finding of the master that such bank was not guilty of actual fraud. This emphasizes the position that the denial of petitioner's right to *pro rata* was not made by the majority of the Court of Appeals to turn upon the question of actual fraud.

Respectfully submitted.

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No. 150.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

Filed Jan. 7, 1901.

No. 150.

UNITED STATES RUBBER COMPANY et al., *Petitioners,*
vs.
AMERICAN OAK LEATHER COMPANY et al., *Respondents.*

Certiorari to the Circuit Court of Appeals for the Seventh Circuit.

Brief and Argument of Henry S. Robbins for Petitioners.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1900.

No. 150.

UNITED STATES RUBBER COMPANY et al., *Petitioners*,
vs.
AMERICAN OAK LEATHER COMPANY et al., *Respondents*.

Certiorari to the Circuit Court of Appeals for the Seventh Circuit.

STATEMENT.

There are two questions in this case:

1. Whether certain preferences given by an Illinois trading corporation to the petitioners, three of its creditors, are fraudulent, and,

2. If so, whether by taking and relying upon such preferences these creditors lost their right to share *pro rata* with the other creditors in the insolvent estate.

For a number of years prior to January 6 1896, C. H. Fargo & Co., a corporation, had conducted in Chicago a large business (from $1,250,000 to $1,400,000 per annum) as a manufacturer and wholesale dealer in boots and

shoes, having in 1892 succeeded a firm of that name. This corporation was essentially a family affair, all its stock being owned by three brothers, Charles, Frank and Edward Fargo. Prior to January 9 1896, these brothers constituted all its officers, Charles being president, Frank vice-president and treasurer and Edward secretary. They together with four employes of the company, who owned no stock and took no part in the management of its business (Rec., p. 159), constituted its board of directors.

On the 6th day of August, 1896 Fargo & Co. failed, and this resulted in the following preferences:

Two judgments by confession August 6 1896 in the Federal court in Chicago against Fargo & Co., one in favor of the United States Rubber Company for $145,400 upon a judgment note payable on demand for $140,000, and dated January 6 1896, and one in favor of L. Candee & Co. for $38,300 upon a judgment note of the same date due on demand for $51,500.

An assignment August 6 1896 by Fargo & Co. to the United States Rubber Company of all its book accounts as collateral security for its indebtedness to said two rubber companies pursuant to an agreement to so assign made January 6 1896.

A judgment by confession in the state court at Chicago August 6 1896 against Fargo & Co. in favor of the Metropolitan National Bank for $25,250 upon a judgment note dated August 5 1896 and made by Fargo & Co. payable to said bank for $25,000.

Two warranty deeds from Fargo & Co. to said bank dated August 6 1896 conveying its factory at Dixon Illinois.

Upon the judgments in favor of the petitioners United States Rubber Company and L. Candee & Co. (hereafter called the Rubber Companies), executions were immediately issued and levied upon all the tangible assets of Fargo & Co., and on the same day, but subject to the foregoing levy, a similar levy was made under the Metropolitan Bank judgment; whereupon on the 11th of September 1896 the American Oak Leather Company, after having obtained a judgment against Fargo & Co. and the return of an execution thereon *nulla bona*, filed the present bill against Fargo & Co., these petitioners and the marshal attacking the foregoing preferences as illegal because made with intent to defraud, hinder and delay the other creditors of Fargo & Co., and praying that the same be set aside and its assets applied to the payment of its *bona fide* creditors.

Subsequently other creditors, whose claims aggregate about $150,000, joined complainant in the suit.

After answers were filed fully disclosing the real facts the court issued a mandatory injunction without bond and placed the assets in the hands of a receiver (Rec., p. 79), and upon appeal this order was affirmed—82 Fed., 248.

Thereafter, the case being at issue, the Circuit Court on motion of complainant referred it to Henry W. Bishop, Esq. master in chancery "to take proofs herein and report the same, together with his conclusions thereon, as to the facts only" (Rec., p. 156), and after a protracted hearing the master made his report finding the facts to be substantially as set forth in the answers of these petitioners. That report, so far as relevant to this hearing, is as follows, the italics being ours (Rec., pp. 160–171):

"There was due January 6, 1896, to Candee & Co.

upon the notes of C. H. Fargo & Co. (given in settlement in November, 1895), the sum of $44,900, and on the same date there was due from the Fargo Company to the United States Rubber Company on open account for proceeds of sale of consigned goods the sum of $141,537.13.

It is shown by the testimony, and I so find, that about January 2, 1896, the C. H. Fargo Co., anticipating difficulty in meeting its regular obligations maturing during that month, applied to one Charles L. Johnson, who represented both the Candee Company and the United States Rubber Company, for a loan of $50,000, representing that the Fargo Company was perfectly solvent and that this accommodation would relieve it from its temporary embarrassments, and enable it to go on with its business.

This application was granted, and on January 6, 1896, Johnson agreed, acting for L. Candee Company, to lend the Fargo Company the sum of $50,000 for six months upon the understanding that this loan and the indebtedness of $44,900 upon the notes previously given as aforesaid and the balance due the United States Rubber Company, and which might become due it, should be secured in such a way as might be satisfactory to their counsel, Mr. Beale, of the law firm of Isham, Lincoln & Beale.

The proposition was accepted on the 6th day of January, 1896, and it was agreed and arranged between the parties as follows:

First. That the $50,000 should be advanced to the Fargo Company by L. Candee & Co., partly on that date and during the succeeding two weeks.

Second. That the Fargo Company should that day execute and deliver its three judgment notes, one for $45,000 payable on demand to the order of L. Candee & Co., to secure that company with respect to its liability as endorser or guarantor upon the notes for $44,900 given previous to January, 1896, one for $51,500 payable on demand to L. Candee & Co., as collateral security to plain notes of the Fargo Company, which were given as evidence of the advance of $50,000 then to be made, and one for $140,000 payable on demand to the order of the United States Rubber Company, as collateral security to

the then existing and to any future indebtedness of the Fargo Company to the United States Rubber Company as aforesaid.

Third. That in case the Fargo Company should at any time find it necessary to suspend business, it would assign as additional security all its accounts and bills receivable; that it should not give any judgment notes to other creditors which would impair the security to the Rubber Companies, *and that the $50,000 advance should be used by the Fargo Company in reduction of its general indebtedness as it matured;* and

Fourth. That the four employes of the Fargo Company who were on the board of directors, and also E. A. Fargo, should retire from the board and there should be elected in their places by the stockholders of the company five persons, to be nominated by said Beale, in whom he had confidence, one of whom should become secretary and treasurer, *and that the directors so to be elected at Beale's nomination should not hamper or interfere with the proper carrying on of the ordinary business of the company.*

* * * * *

I find that the attention of the general creditors was never called to this arrangement and they had no knowledge of it. The Metropolitan National Bank first learned of it at or about the time a judgment note was given it to secure the payment of its claim of $50,000 as hereinafter stated.

I find that in pursuance of this arrangement, and on January 6, 1896, a meeting of the board of directors of the C. H. Fargo & Co. was had before any change in said board, when a resolution was passed authorizing the borrowing of the $50,000, the giving of judgment notes, as in said agreement provided for, and assignment of the accounts, bills and choses in action upon the contingencies agreed upon; and upon the same day the three judgment notes referred to were executed and delivered by Charles E. Fargo, president of the company; Frank M. Fargo, vice-president and treasurer, and E. A. Fargo, secretary, and the loan of $50,000 was perfected, $10,000 being advanced at the time and the balance of $50,000 during the succeeding two weeks.

This action was ratified on the 8th day of January,

1896, by the unanimous vote of the stockholders of C. H. Fargo & Co., all the shares being represented.

I find that in pursuance also of said arrangement, and as a part of it, at a meeting of the stockholders of C. H. Fargo & Co., held January 9, 1896, George C. Madison, Tiffany Blake, Buell McKeever, Frederick B. Fuller, Gilbert E. Porter, Charles E. Fargo and F. M. Fargo were duly elected directors for the ensuing year.

The first five, except Blake, were employes in the office of William G. Beale, and said Blake was assistant corporation counsel of the City of Chicago, of which William G. Beale was then corporation counsel, and all five were elected by the stockholders at the suggestion of said Beale. Subsequently, at a meeting of the newly constituted board, at which Charles E. Fargo was re-elected president of the company, Frank M. Fargo was re-elected vice-president of the company and Buell McKeever was elected secretary and treasurer of the company, the by-laws of the company were amended providing against the giving of judgment notes or preferential security without special authorization of the board of directors.

I also find that the change of the board of directors and officers, and the changes of the by-laws of said company and the resolution thereof authorizing judgment notes and assignments of accounts if necessary, were all for the purpose of giving preferential security to the Rubber Companies, and the matter was kept secret in order to allow the Fargo Company an opportunity of getting through embarrassments apparently temporary but not with a fraudulent intent as to the other creditors of the company. The only purpose and object of changing the board of directors as aforesaid and of amending the by-laws was to protect the Rubber Companies against the giving by the Fargo Company of preferential security or judgment notes to other of its creditors which should be superior to the security of the Rubber Companies.

I further find that the arrangement as made was carried out in good faith by the parties and that the directors elected at the suggestion of said Beale took no part in the active management of the Fargo Company after their election, and that no stockholders' or directors' meetings

of the Fargo Company were held after January 9, 1896, until August 5, 1896.

I find that on January 9, 1896, which was the date of the meeting of the new directors, the authorized capital stock of the said corporation of C. H. Fargo & Co. was $400,000 and the debts of the corporation on January 6, 1896, as follows:

Amount owing United States Rubber Company	$141,537 13
Amount owing Candee & Company	44,900 00
Amount owing Metropolitan National Bank	50,000 00
Amount owing other creditors	210,216 20
Total	$446,653 33

I find that the value of the assets of C. H. Fargo & Co. at that time had not been definitely ascertained, but I find, as a matter of fact, as the results of efforts since made in collecting the same in liquidation and from other sources of information disclosed by the testimony, that on the 6th day of January, 1896, the assets of said company were not sufficient to discharge its indebtedness, *of which fact the defendants, the Rubber Companies, are shown to have been ignorant, relying upon the representation of the Fargos that there was a large excess of assets over liabilities.* The fact that Johnson, representing the Rubber Companies, made no detailed examination of the assets of the company, but consented to advance the money which was applied for, is evidence to my mind that he believed in the assurances which were given him by the Fargos of the condition of their company.

I further find that between January 6, 1896, and August 6, 1896, the new liabilities incurred by said corporation to creditors other than the Rubber Companies and the bank were $246,660.54 (of which there was due and unpaid on August 6, 1896, $142,690.95), and that during the same period the Fargo Company paid out more than $300,000 to its general creditors in the regular course of business, paying substantially all of the indebtedness of January 6, 1896, which was largely to the same persons who are now creditors.

I further find that between January 6 and August 6, 1896, the Fargo Company continued its business as be-

fore, *reducing its general indebtedness to a considerable extent with its general creditors;* that during said time it paid Candee & Co. $44,900, the amount of its indebtedness prior to January 6, 1896, and $13,470 on account of the advance of $50,000 as aforesaid; that during said time it paid to the United States Rubber Company $15,000 on account of the indebtedness to that company existing January 6, but it also sold consigned goods of that company to the amount of $24,534.04, of which it remitted only $5,495.40; and that on August 6, 1896, there was due to the United States Rubber Company the sum of $142,424.81, and to L. Candee & Company the sum of $36,530.

I further find from the testimony that the indebtedness of the Fargo Company, which was incurred after January 9, 1896, up to the time of the entry of judgment upon the judgment notes referred to, was incurred in ignorance of the giving of the judgment notes and the change of directors, and of the change of officers, and of the arrangement existing between the Rubber Companies and the Fargo Company, and that the amount of the claims that were thus contracted and is still unpaid exceeded $110,000.

I find that while Johnson and Sadler, representing the Rubber Companies, were here from January 2 to January 6, 1896, that it was then agreed that separate books showing sales of consigned goods should be kept, and the proceeds of the sales thereof should be kept in a separate bank account, which was done.

I find that the advance of $50,000 on January 6, 1896, and the giving of the judgment notes and security referred to, was the result of an evident feeling upon the part of all the parties to the transaction, and was in the belief and expectation on their part, that through the assistance which was in this way afforded the Fargo Company it would be enabled to continue its business successfully and become ultimately relieved of its financial embarrassment, and that said arrangement was entered into in good faith and without any fraudulent intent.

I find that the testimony does not show that the parties were influenced in making the arrangement aforesaid upon a belief of the insolvency of the Fargo Company at

that time, and the conduct of the corporation afterwards and until about the time of the entering up of the judgment notes, in my judgment, clearly indicated the hope and expectation that the Fargo Company would be finally relieved of its troubles.

In support of this conclusion I find that in the meantime and between January 6, 1896, and August, 1896, in the regular course of its business the Fargo Company reduced, to a large extent, the indebtedness which existed on January 1, 1896, increasing the capacity of their manufacturing business, reducing its stock and discharging, to a large extent, its general liabilities, except with the United States Rubber Company and the Metropolitan Bank, with an evident purpose and expectation of continuing its business; during which time nothing is shown to have occurred with these parties inconsistent with this theory.

I find that during this period the general creditors were substantially the same as before, with the exception of the Eagle Tanning Works of Chicago, whose claim of $2,500.24 has been established, for the goods purchased on credit between April 1, 1896, and July 15, 1896, and Wilder & Company, and the Pfister & Vogel Leather Company, hereinafter mentioned.

* * * * *

And I also find that during this time upon the letterheads of the C. H. Fargo Company the printed names of the Fargos, treasurer and secretary, appeared as before, without anything to show any change in the construction or management of said corporation, nor were such changes in any way mentioned, or their real condition disclosed.

* * * * *

I further find that during many years prior to January 6, 1896, the C. H. Fargo Company had been doing business with the Metropolitan National Bank of this city, its banker, resulting in the creation from time to time of a large indebtedness to said bank, which was finally reduced, in the usual course of business, so that on the 5th day of August, 1896, said indebtedness amounted to the sum of $40,000.

That the Metropolitan National Bank, during the sum-

mer of 1896, applied to C. H. Fargo & Co. to reduce its indebtedness to it and to finally discharge it by the month of November following.

I further find that at the same time said bank gave the C. H. Fargo Company said notice, and down to about the 3d or 4th day of August, A. D. 1896, it had no knowledge of any transactions which occurred between it and the Rubber Companies in the previous month of January, and that it did not know of the change in the board of directors of said C. H. Fargo & Co., or that it had given the Rubber Companies judgment notes for an indebtedness owing by it to said Rubber Companies, or of the agreement which had been entered into in respect to the same between it and the Rubber Companies, or of the action which had been taken by the newly-constituted board in pursuance of this agreement.

I further find that on or about Monday, the 3d day of August, A. D. 1896, Charles E. Fargo, president of the said C. H. Fargo & Co., called at the Metropolitan National Bank, and while there applied to the bank for an additional loan of $10,000.

I find that during this interview, or shortly thereafter, the said Charles E. Fargo informed the president of said bank that the said C. H. Fargo & Co. had given the Rubber Companies judgment notes for the amount of its indebtedness to them, and that while said C. E. Fargo insisted that the assets of his company were at that time largely in excess of its indebtedness and ample to meet the entire amount thereof, that, owing to the difficulty in making its collections as rapidly as its outstanding paper matured, his company would be obliged to fail unless it received some assistance.

I find that at the time of said interviews the said C. E. Fargo represented to the president of said bank that the said C. H. Fargo & Co. was indebted to him and his brothers for money exceeding $10,000 which they had borrowed upon their notes for the benefit of the company, and which they had paid over to the company for use in its business, and that said Fargo brothers had put up some bank stock that they owned as collateral to said notes, and C. E. Fargo thereupon proposed to said bank that if it would loan said C. H. Fargo & Co. $10,000 in

addition to its then existing loan, so that said company could reimburse him and his brothers and enable them to take up said notes, he would procure from the said C. H. Fargo & Co. judgment notes for said bank, both for said sum so advanced as aforesaid, and also for notes then remaining due said bank to the amount of $40,000.

I further find that said bank acceded to said proposition, and loaned said C. H. Fargo & Co. said additional sum of $10,000, receiving two judgment notes of the Fargo Company for the sum of $25,000 each, crediting to the account of said C. H. Fargo & Co. in said bank said sum of $10,000.

I further find that at the time of the completion of this arrangement with said bank, neither the bank nor its officers nor attorneys had any knowledge of the change of the board of directors of the said C. H. Fargo & Co., or of its by-laws, but the bank did know that the Rubber Companies, as a part of the final arrangements made, were entitled equally with themselves to enter judgment upon the judgment notes which had been given.

I further find that neither the complainants herein nor any of the other creditors of the said C. H. Fargo & Co. were led to give credit to said company by reason of the transactions had between it and the bank, nor did any of said parties sell any goods to said C. H. Fargo & Co. subsequent to the time when said bank made said $10,000 loan aforesaid to C. H. Fargo & Co., nor did the said bank in any way participate in or have any knowledge of the change in the by-laws of said C. H. Fargo & Co. as aforesaid.

I further find that from about the time when the said judgment notes were given to said bank, as aforesaid, the said bank entered into a stipulation with the Rubber Companies by which it was agreed that they should unite their efforts to collect their respective claims against the said C. H. Fargo & Co. and should share *pro rata* in whatever proceeds should be derived therefrom.

* * * * *

I further find upon the testimony submitted to and taken before me in connection with this branch of the

case, that the defendant, the Metropolitan National Bank, is not shown to have been guilty of any actual fraud as against the complainants or the other creditors of C. H. Fargo & Co. by reason of any of its transactions with the said defendants, C. H. Fargo & Co. or the said Rubber Companies.

I further find that August 6, 1896, before entry of the judgments in favor of the Rubber Companies as set forth in the pleadings, C. H. Fargo & Co., by its president, C. E. Fargo, duly assigned to the United States Rubber Company all the accounts and bills receivable of the Fargo Company as further security for the indebtedness to the Rubber Companies, pursuant to and in accordance with the agreement made in January, 1896.

I find nothing in the testimony which has been taken before me upon this reference which so changes the record which was before the court upon the hearing of the application for the appointment of a receiver as to lead me to a conclusion different from that announced by the court at that time; *indeed, the effect of the testimony, in my judgment, is to explain and strengthen the conclusion then expressed by the court, that there was no fraud in fact or want of good faith shown in the conduct of any of the defendants in respect to the transactions complained of; and upon a careful examination of the whole record and testimony I so find and report.*"

Sundry exceptions filed by respondents (Rec., pp. 604–636) were overruled by the Circuit Court, and the report was in all respects confirmed, but a decree was entered setting aside the above preferences to petitioners as "fraudulent in law (although not at the time believed by the parties to be such, but, on the contrary, believed to have been within their rights) as against the other creditors of C. H. Fargo & Co.," and directing its assets (about $111,000) in the hands of the receiver to be distributed *pro rata* among its creditors, including petitioners. (Rec., p. 639.)

The case was taken by appeal and cross-appeal to the

Circuit Court of Appeals, which by a divided court reversed the decree in so far as it permitted petitioners to share *pari passu* in the fund to be distributed, thus in effect depriving petitioners of any share in the distribution.

Mr. Justice Brown, however, filed a dissenting opinion favoring affirmance.

Thereupon this court, upon the petition of the Rubber Companies and the Metropolitan Bank and the cross-petition of the complaining creditors, issued the present writs of *certiorari*.

Specifications of Error.

The errors and cross-errors assigned upon the record (Rec., p. 645, 646, 667-692) present the two questions stated at the outset, and petitioners claim that the decree of the Circuit Court was erroneous in not dismissing the bill for want of equity, and that if this be not so, the cross-error questioning petitioners' right to share in the fund is without merit and the Court of Appeals erred in directing otherwise.

BRIEF OF ARGUMENT.

I.

NO ACTUAL FRAUD IS SHOWN.

First, as to the preferences of the Rubber Companies.

Upon motion of the *complainant* and the concurrence of the defendants this case was referred to a master to take proofs and report the same, together "with his conclusions thereon as to the facts only." (Rec., p. 156.)

The master expressly found that there was no actual fraud in these preferences. The Circuit Court in confirming his report also so decided, Judge Grosscup saying:

"The intervening creditors have not clearly proven that the Rubber Company and the Candee Company had any intention to commit a fraud upon the other creditors at the time of the arrangement of January, 1896; on the contrary, I think the weight of proof shows that both these companies believed that, with the help they were about to give Fargo & Co., that company would be able to weather the storm. I am, therefore, of the conclusion that there was no intentional fraud committed."

Under these circumstances the master's findings, should be accepted as presumptively correct, and not be set aside unless clearly wrong.

Crawford v. *Neal*, 144 U. S., 585–596.
Davis v. *Schwartz*, 155 U. S., 631–636.

In *Crawford* v. *Neal*, *supra* (a suit to avoid a preference as fraudulent) the Chief Justice said:

"The cause was referred to a master to take testimony therein, 'and to report to this court his findings of facts and his conclusions of law thereon.' This he did, and the court, after a review of the evidence, concurred in his findings and conclusions. Clearly, then, they are to be taken as presumptively correct, and unless some obvious error has intervened in the application of the law, or some serious or important mistake has been made in the consideration of the evidence, the decree should be permitted to stand."

Upon the cross-appeal the finding of the master that there was no actual fraud was vigorously assailed but Mr. Justice BROWN, in his opinion, said:

"To make it actually fraudulent, such as to require the claims of those preferred creditors to be postponed to the claims of the general creditors, I think it should clearly appear either that the preferred claims were not *bona fide*, of which there is no pretense, or that the arrangement was entered into, not for the purpose of tiding the company over its immediate crisis, enabling it to continue business, and at the same time to secure the preferred creditors, but for the purpose of ultimately winding it up, and in the meantime of giving it credit and enabling it to purchase additional goods, which the preferred creditors would thereby be able to seize and subject to their own debts. I find no testimony to satisfy me that an actual fraud upon the general creditors was intended. * * * The evidence satisfies me that there was a *bona fide* attempt to assist the Fargo Company in continuing its business, with the hope of ultimately pulling it through, and that if this attempt had been successful, it would have redounded greatly to the interest of the general creditors."

The majority opinion of the Circuit Court of Appeals (Rec., pp. 717–734) certainly does not in terms—and we think does not intend to—overrule the master's findings of facts. True, that opinion does in one place say that "the Rubber Companies were guilty of fraud in fact," but it also says:

"Questions of fraud in law and fraud in fact are in their nature separate, though not always distinguishable by clearly defined lines. In this case * * * no attempt will be made as we proceed to keep the distinction all the while in view."

And in commenting on the language of the master's report "but not with fraudulent intent as to the other creditors of the company" the opinion says:

"If, however, the master intended, as it seems probable he did intend, to find that the parties to the scheme had no conscious purpose to harm either present or future creditors, the finding cannot abrogate or restrict the application of that familiar rule, without which a coherent code of law or morals would be impossible, that men shall be deemed to intend the natural or probable consequences of their acts or conduct. * * * The inventors of the scheme were bound to apprehend its probable consequences."

And again:

"It was hoped—let us say believed—by all concerned, that with that sum [$50,000], under the plan agreed upon, the company 'would be able to weather the storm.'"

And again:

"It was not, as alleged in the bill, a part of the plan that increased purchases should be made for the purpose of improving the security of the rubber companies."

From the foregoing and other expressions in this opinion it would seem that a majority of the Court disagreed with Mr. Justice Brown, not upon any question of fact, but upon a legal question, *i. e.*, what constitutes actual fraud. They deduce actual fraud, not from *motives* of the parties to the preferential transaction, not because of any desire or intention to commit a wrong upon the other creditors of Fargo & Co., but because of the supposed injurious *effect* of the transaction upon such other creditors—an effect rendering it illegal, *independent*

of the actual intention of the parties. The intention here made the basis of actual fraud is not an actual or conscious intention, but one imputed to petitioners as a matter of law. In its opinion the court shows no purpose to overrule the master's finding that petitioners were guilty of no *intentional* wrong nor *conscious* purpose to injure the other creditors. Thus the question of actual fraud is made to hinge, not upon *motives*, but *results*.

This seems to us to disregard the well-established distinction between actual and constructive fraud, which is recognized by this court in

Neal v. *Clark*, 95 U. S., 704–9,

where in construing the word "fraud" in the bankrupt act Mr. Justice Harlan said:

"It means positive fraud, or fraud in fact, involving moral turpitude or intentional wrong. * * * and not implied fraud, or fraud in law, which may exist without the imputation of bad faith or immorality."

But, if we are to go behind the master's report, the evidence clearly shows the parties guiltless of any actual fraud in the preferential transactions of January 6.

In determining this question fraud is not to be presumed, but to be proved by the party alleging it; the Rubber Companies must be shown to have concurred in the fraudulent intent, the intent of the Fargos alone not being sufficient (*Union Natl. Bank* v. *State Natl. Bank*, 168 Ill., 256–264; *Crawford* v. *Neal*, 144 U. S., 585–595); and conduct which is as consistent with an honest purpose as with a dishonest one does not establish fraud.

What, then, are the facts in this record bearing upon the intention of the parties in entering into the January agreement?

These Rubber Companies had done business with the Fargo Company for more than twenty years, its volume reaching in later years $300,000 per annum, and their relations were close and friendly. (Rec., pp. 495–6). The January transaction was initiated by the Fargo Company. The Rubber Companies were not asking payment or preferences, but the Fargo Company sent to them for financial assistance. (Rec. pp. 201, 496, 497.) Up to this time nothing had occurred to raise in the minds of the Rubber Companies any suspicion of the credit of the Fargo Company. (Rec., p. 510.) The Candee Company had always had the utmost confidence in the Fargo Company. (Rec., p. 502.) At the interviews leading up to the January arrangement, the Fargos represented that their company was solvent, that it had assets largely in excess of its liabilities, that, while it was embarrassed, its embarrassment was temporary only, and that with the financial assistance requested it could overcome its difficulties by May 1st following (Rec., pp. 226–227, 497, 501, 510, 520, 525, 550, 442), and they submitted to Johnson, the representative of the Rubber Companies, figures showing its assets and liabilities. (Rec., p. 226.) He testified that he believed these statements, and that otherwise he would not have entered into the arrangement. (Rec., pp. 497, 501, 507, 503, 510, 520.) The Fargos believed their statements to be true. (Rec., p. 226.) It is noteworthy that Mr. Fargo at first asked Johnson for a loan of only $25,000, that Johnson would not lend anything unless it was beyond question sufficient to carry the concern through its troubles, that he, Johnson, made the Fargos re-examine their condition to see if $25,000 would be sufficient, and that when upon re-examination it was found that $50,000 would be necessary, John-

son agreed to advance it. (Rec., pp. 200, 227, 231, 501, 502, 553). Johnson wanted to help the Fargo Company over its troubles in order to maintain through it a channel for the distribution of rubber goods. (Rec., pp. 512, 501). If, as contended, Johnson's purpose was to purchase a preference by advancing the $50,000, and to put himself in a situation to defraud other creditors rather than to help this struggling corporation through its temporary embarrassment, why did he advance $50,000 when $25,000 was all Fargo asked for?

There was no agreement, discussion or intention between the parties that the Fargo Company should proceed to increase its tangible assets, or that it should give control to the Rubber Companies. (Rec., pp. 266, 267, 268.) It was part of the arrangement that the Fargo Company should reduce its general indebtedness, contract its business and proceed on economical and conservative lines. (Rec., pp. 232, 233, 506, 558.) This is not consistent with the contention that the purpose of the arrangement on the part of the Rubber Companies was to "rope in" creditors and thereby secure assets to levy upon.

It was also stipulated by Johnson that the $50,000 to be advanced should be used in reduction of the general indebtedness of the company as it matured. (Rec., p. 445.) In January there was no intention of ceasing business at any time (Rec., pp. 266, 267), for the Fargo Company expected to be relieved of its embarrassment by May 1 1896 (Rec., pp. 231, 232), and the whole conduct of the parties is consistent with such expectation. Charles E. Fargo, (a witness for respondents) who was the manager of the company and chiefly carried on the negotiations for it, testified that the sole purpose of

the January arrangement was to help the company over its embarrassment. (Rec., pp. 229, 230.) The uncontradicted testimony is that the change of the board of directors was only a part of the preferential security and was only for the purpose of giving assurance to Johnson that the Fargo Company would not violate its contract with the Rubber Companies by giving other judgment notes, etc., to undermine or impair the preference contracted for. (Rec., pp. 241–501, 505.) This change was suggested by Fargo himself as an evidence of his good faith in promising not to impair the security of the judgment notes. (Rec., pp. 295–6, 551.)

The arrangement did not provide, and it was not the purpose of the parties, that the Rubber Companies should in any way control, interfere with, or have knowledge of, the business of the Fargo Company after the arrangement was made. When it was concluded on January 6th the representative of the Rubber Companies went back to New York and left the Fargos entirely free to manage the business as before. (Rec., 506.) Charles E. Fargo also testified, and all the circumstances combine to support his statement, that after the arrangement was made the business was carried on solely for the benefit of the Fargo Company, and not at all for the benefit of the of the Rubber Companies. (Rec., pp. 251, 268–269.) The Rubber Companies and the new directors had no knowledge of how the business was managed after January (Rec., p. 269), it having been managed, as theretofore, by consultation of the three Fargos, the owners of the entire capital stock. (Rec., p. 246.) If the Rubber Companies entered into this arrangement to use the Fargo Company for their own benefit, would they not have taken steps to control the management of the assets for that purpose?

But let us see how the business as a whole was managed after the arrangement in January; for this should throw strong light upon the intentions of these parties. Pursuant to the contract the business thereafter was contracted, the salaries of the Fargos were reduced one-half (Rec., p. 233), and the total liabilities of the company to its general creditors (that is, to others than petitioners) were decreased to the extent of $67,524.22. (Rec., p. 458.) This reduction of liabilities means a corresponding reduction of assets, and in itself refutes the contention that the Rubber Companies entered into the arrangement in order to *swell* the assets subject to levy.

But what was the effect of the business thereafter upon the indebtedness to the Rubber Companies? On January 6th, before the arrangement and before the advance of the $50,000 was made, the entire amount due the Rubber Companies was $186,427.61, while on August 6th and to-day the aggregate amount is $178,954.81, a reduction of but $7,482.32 (Defendants' Exhibit 19, Rec., p. 595.) During this same period the Fargo Company paid out in cash in the ordinary course of business over $310,000 to its other creditors. (Rec., p. 458.) It paid off nearly the entire indebtedness existing on January 6th to the general creditors, who are substantially the same persons who are now the complaining creditors (Rec., p. 293), and it also incurred about $242,000 of new indebtedness to the merchandise creditors, of which less than $150,000 remains unpaid. (Rec., p. 458.) *These figures establish incontrovertibly that during this period the business of the Fargo Company was carried on in the interest of its stockholders and creditors generally, and not of the Rubber Companies.*

The figures quoted also show that the Fargos expected to overcome their embarrassment. This is corroborated by the fact that in March or April 1896, they enlarged the manufacturing plant of the company by building a new addition at an expense of $7,000. (Rec., p. 223.) Some notes of the company ($15,000) upon which the Fargo brothers were sureties were paid in the regular course of bnsiness, but there is no evidence that they individually profited to the extent of a dollar from the assets by this January arrangement. During this period the United States Rubber Company continued to do business with the Fargo Company as theretofore, supplying all its wants, and the Fargo Company paid it on account of the indebtedness of January 6th, $15,000; but it during that period also sold consigned goods of the United States Rubber Company amounting to $24,534.04, of which it remitted only $5,495.40 (Defendant's Exhibit 19, Rec., p. 595), so that the business between January and August resulted in an increase in its indebtedness to the United States Rubber Company.

THE METROPOLITAN BANK WAS NOT GUILTY OF ACTUAL FRAUD.

The master found that "the Metropolitan National Bank was not shown to have been guilty of actual fraud as against * * * the complainant or the other creditors of C. H. Fargo & Co., by reason of any of its transactions with the said defendant C. H. Fargo & Co. or the said Rubber Companies," and "that there was no fraud in fact or want of good faith in the conduct of any of the defendants in respect to the transactions complained of."

This finding was endorsed by Judge Grosscup and tacitly approved by Mr. Justice Brown. Indeed the majority opinion, as we read it, does not find the bank guilty of actual fraud.

It does apparently dissent from the finding of the master that neither the bank, nor its officers, nor attorneys, had any knowledge of the change of directors or by-laws, upon the ground that there is no evidence that the bank or such officers did *not* have such knowledge, and also that the bank's president was put upon inquiry. If this is referred to to show actual fraud, it overlooks the principle that fraud must be affirmatively proved by the one alleging it. If therefore such knowledge is here an element of fraud, it should have been affirmatively proved by respondents. Fraud cannot be deduced from the absence of evidence on this subject. So, too, actual fraud cannot be predicated upon mere constructive notice or knowledge. Certainly the matters here referred to are insufficient to overturn the master's finding that the bank was guiltless of actual fraud. The bank's preference will be further considered under the question of constructive fraud.

Hence, if the evidence is to be looked into, no case of actual fraud is shown.

II.

THERE WAS NO CONSTRUCTIVE FRAUD.

The question here is whether upon the facts found by the master these preferences are *constructively* fraudulent.

In the discussion of this question the following legal propositions are not questioned by the lower courts or respondents' counsel:

(1) These preferences, made in Illinois by a corporation of that state, are to be tested by the law of Illinois so far as declared.

Peters v. *Bain*, 133 U. S., 670.
Allen v. *Massey*, 17 Wall., 351.
Smith Purifier Co. v. *McGroarty*, 136 U. S., 237.

(2) The right of an individual debtor on the eve of failure to prefer one creditor to the exclusion of others exists in Illinois to its fullest extent.

Tomlinson v. *Matthews*, 98 Ill., 178.

(3) An Illinois corporation, although insolvent and contemplating ceasing business, has the same right as an individual to prefer creditors other than directors.

Reichwald v. *Commercial Hotel Co.*, 106 Ill., 439–451.
Gottlieb v. *Miller*, 154 Ill., 44.
Glover v. *Lee*, 140 Ill., 102.
Warren v. *First National Bank*, 149 Ill., 9.

(4) An Illinois corporation, if contemplating the continuance of its business, may, although insolvent, give judgment notes to its directors for a present loan of money.

Illinois Steel Co. v. *O'Donnell*, 156 Ill., 624.

Whether such corporation could give to a director a preference in part covering a pre-existing debt and in part for money advanced to aid the company to continue its business has not yet been decided by the Illinois court. In the absence of such decision that of this court in *San-*

ford Tool Co. v. *Howe*, 157 U. S., 312, upholding such prefence *in toto*, should control.

(5) Debts for which the directors are liable as endorsers, etc., may be preferred by an Illinois corporation on the eve of its failure.

Blair v. *Illinois Steel Co.*, 159 Ill., 350.
Rockford Co. v. *Standard Co.*, 175 Ill., 89.

(6) Directors may be relatives of the preferred creditors without invalidating the preference.

Ragland v. *McFall*, 137 Ill., 81.
Illinois Steel Co. v. *O'Donnell*, *supra*.

(7) The giving of judgment notes is recognized in Illinois as a legitimate method of preference.

Field v. *Ridgely*, 116 Ill., 424.

Hegeler v. *Bank*, 129 Ill., 157.

In the light of these legal principles it is proposed now to examine separately the preferences to the Rubber Companies and the Metropolitan Bank.

First as to the Rubber Companies. To these the rule prohibiting directors from preferring themselves when contemplating a cessation of business has no application. The preferences of the Rubber Companies were not to directors. In granting them Fargo & Co. and the Rubber Companies dealt at arm's length. None of its directors or officers were either directly or indirectly connected with the Rubber Companies. Their preferences were not a result of the election of the directors nominated by Mr. Beale. On the contrary, the election of such *new* directors was the result of the contract for preferences previously made by Fargo & Co. through its old directors. The new directors by no vote or act contrib-

uted to, or participated in, the giving of these preferences, nor were they interested in, or benefited by, them. Besides, they were given when Fargo & Co. was a going concern and not contemplating failure.

This is equally true of the assignment of the accounts. While the actual assignment thereof was not made until August 6, it was then made by the president, in obedience to a resolution passed by the old directors on January 6. The new directors did not participate in it.

The conditional promise to assign by way of preference, should the company find it necessary to suspend business, was valid.

In *Smith* v. *Craft*, 17 Fed. Rep., 705, a similar undisclosed promise, although attacked as fraudulent, because giving a delusive credit, was held not to invalidate the preference given in performance thereof, and this court (*Smith* v. *Craft*, 123 U. S., 436) upon a certificate of division in another case involving the same failure, held such undisclosed promise to prefer, followed by a preference, was not *per se* or constructively fraudulent.

In *Feckheimer* v. *Baum*, 43 Fed., 719, the court, in speaking of an undisclosed agreement to prefer, which was claimed to have given the creditor a delusive credit, said:

"This instrument is nothing more than an agreement to prefer in case of insolvency. The law of Georgia authorizing an insolvent debtor to prefer a creditor, it is difficult to perceive why a promise to prefer in itself can be regarded as the beginning of a fraud. * * * Here the instrument was merely a promise to give a mortgage. There is no provision of the state law for record of such paper. * * * We know of no obligation which required Comer & Co. to publish such an agreement had with one of their customers."

See, also,

National Bank v. *Whitmore*, 104 N. Y., 297.

The contract being legal, it was not only the right, but the duty, of Fargo & Co. to carry it out. Having obtained money on the faith of it, it would have been dishonest not to fulfill it. This duty did not become less because the board of directors changed after the promise was made. In fact the new directors did nothing to carry it out, and could not properly have done anything to prevent its being carried out, but had they participated in the actual assignment in August, there could be no legal objection to it. The rights of the parties and the validity of preference acquired under the contract to prefer should be fixed as of January. Performance in August should relate back to the prior legal promise.

National Bank v. *Whitmore*, *supra*.
Clark v. *Iselin*, 21 Wall., 360.
Hauselt v. *Harrison*, 105 U. S., 401.
South Branch Co. v. *Ott*, 142 U. S., 622.
Douglas v. *Vogeler*, 6 Fed. Rep., 53.

Hence, the preferential assignment of accounts is to be regarded as made in January, and its validity is to be decided by the same legal principles which apply to the January judgment notes.

All the judges below held the Rubber Companies' preferences constructively fraudulent, although differing somewhat in the grounds therefor. Judge Grosscup held that neither the giving of the judgment notes nor the assignment of the accounts in itself, constituted a fraud.

"The vice in the conduct of the Rubber Company and the Candee Company consists in their attempting to

tie up the corporation against the power to give like preferences in favor of others." (Rec., p. 636 b.)

The other learned judges seem to have treated the fact that the preferences were kept secret as in itself itself an independent element of fraud. It is, however, safe to asssert that all the judges below tacitly concede that, if secrecy and the change of directors and treasurer were absent, the preferences to the Rubber Companies would be valid under the laws of Illinois. Do, then, either of these elements make the preferences constructively fraudulent?

SECRECY AS AN ELEMENT OF FRAUD IN THE PREFERENCES.

On this point the master found as follows:

"The matter was kept secret in order to allow Fargo & Co. an opportunity of getting through embarrassments apparently temporary, but not with a fraudulent intent as to the other creditors of the company."

This finding (which refers to conscious intent) is amply sustained by the evidence, and we do not understand that its correctness is questioned by the lower courts. The only conceivable *fraudulent* intent or motive in keeping the matter secret would be to thereby purchase goods on credit to subsequently levy upon; but the majority opinion says:

"It was not, as alleged in the bill, a part of the plan that increased purchases should be made for the purpose of improving the security of the Rubber Companies."

It is not claimed that there was any agreement for secrecy, but Judge WOODS says:

"The master's finding on the point implies, and the evidence demonstrates, a *mutual understanding* between those concerned that secrecy was necessary, and an ex-

press agreement that it should be kept would not have made the understanding more clear or its fulfillment more imperative. * * * Secrecy kept for a purpose is not accidental or unintended; it is premeditated; it is in essence the same as if agreed upon."

Thus the learned judge seems to assert that in Illinois *intentional* secrecy in itself renders a preference fraudulent, that secrecy kept for a purpose—however commendable that purpose—avoids a preference, and that intentional secrecy, although solely for the purpose of enabling a corporation to get "through embarrassments apparently temporary," is fraudulent.

Whatever be the decision in other states—and in them there is some conflict and confusion—it is certainly beyond question that in Illinois intentional secrecy in a preference, although followed by the giving of credit which without it would have been withheld, is not a fraud on the creditors unless the *motive* is fraudulent. A preferential agreement kept secret with a legitimate motive, or for a legitimate purpose, is not fraudulent although it is followed by the giving of credit that would otherwise have been withheld. The policy of the law in Illinois is firmly settled. It recognizes the right (as does this court in *Sanford Tool Company* v. *Howe*, *supra*) of an embarrassed debtor, whether individual or corporation, to struggle to outlive financial embarrassment. It appreciates that this struggle requires the continuance of purchases on credit. It recognizes the right of such a debtor to give judgment notes, and does not—as it does in the case of mortgages—provide by statute for any public notice thereof. It exacts of an embarrassed debtor no unsought disclosure of outstanding judgment notes. It here imposes upon the creditor the duty of inquiry from his debtor. It condemns the keeping secret of

judgment notes, where the purpose is to increase the assets to levy upon, for here the *intention* is wrongful, but it upholds judgment notes intentionally kept secret, although followed by purchases on credit, where the purpose is honest—the continuance of the business in the expectation of outliving embarrassments. It allows, as Judge Grosscup concedes (Rec., p. 84, 85) "preferences, and such preferences as are necessarily unknown to others than those concerned." As he says, "A debtor can prefer one or more of his creditors without changing his personal aspect toward the stock in trade, or the public at large."

The test in Illinois is not whether the secrecy is intentional or not, but whether the purpose of the secrecy is honest or dishonest. To hold otherwise would be to practically inhibit the giving of judgment notes—a very general form of security in Illinois. Such notes are usually intentionally kept secret. To require their existence to be proclaimed would in many cases destroy credit and precipitate failures, and thus deprive an insolvent debtor of an opportunity to outlive financial embarrassment.

The position of the Circuit Court of Appeals that secrecy kept for the purpose of enabling Fargo & Co. to outlive embarrassments is fraudulent because it gave rise to a fictitions credit is opposed to the Illinois law, as the two following cases show:

In *Hegeler* v. *First National Bank of Peru*, 129 Ill., 157, the facts and the contentions of the attacking creditors, except in the feature of the change of directors, were strikingly like those in the case at bar. An insolvent corporation offered to secure a debt to its bank by mortgage, but this the bank refused, "*because it would in-*

jure the credit of the glass company and prevent it from obtaining elsewhere further credit," and in lieu thereof took from the company judgment notes for its indebtedness. *Here was a clear case of intentional secrecy to avoid injury to credit.* These notes were retained without the entry of judgment thereon *for more than a year.* The corporation during this time continued its business, and the attacking creditors advanced the corporation money upon false statements by it of its financial condition, and, as was claimed, "upon the delusive and fictitous credit given it by said First National Bank of Peru [the preferred creditor], in allowing it to retain all its property apparently free from incumbrance," and that, had the attacking creditors "known or suspected the existence of such judgment notes, they would have given no credit or loan whatever to such glass company;" and that "such concealment enabled the debtor to deceive and mislead other persons to give it credit that would otherwise have been withheld." But the court upheld the preferential judgment, saying (the italics ours):

"The argument proceeds throughout upon the proposition that the bank took its notes and held them under circumstances that made its conduct operate as a fraud upon others. There is no pretense that there was any agreement to conceal its claim against the glass company, much less that any such agreement was made for the purpose of enabling the company to obtain credit from others. No evidence can be found in the record proving, or tending to prove, acts or declarations on the part of appellee calculated to induce appellant to give credit to the glass company. There is nothing in the bill, and certainly nothing in the evidence, to show that at the time appellee took its notes and refused to take mortgage security, it did not honestly believe that, notwithstanding the insolvency of the glass company, it would, *if its credit could be maintained*, successfully recover from its embarrassment, continue business, and pay all its debts."

In *Field* v. *Ridgley*, 116 Ills., 424, a firm largely in arrears to a creditor executed to him judgment notes and thereafter continued as before to conduct an extensive mercantile business on credit *for four years*, when it failed. Judgments entered on these notes were attacked as a fraud on creditors in that they had been induced to sell goods to the firm when insolvent, a fact known to the judgment creditor, but not to the attacking creditors; but the court upheld the preference, saying,

"The acts of fraud relied on * * * are no evidence of fraud at all. * * *

"As to the complaint that appellees held the notes so long without giving notice of their having them, we perceive no force in it. There is no law or mercantile usage, so far as we are advised, that requires one in business to disclose the state of his accounts with his customers to others having dealings with them, and there are manifest reasons why this should not be done except when the creditor is specially interrogated on the subject by one having a personal interest in knowing. It is not charged in this case that appellants ever sought any information of appellees [judgment creditors] in respect to the claims of the latter against Kimber, Ragsdale & Co., or that they ever said or did anything, outside of what we have already stated, to mislead appellants with respect to Kimber, Ragsdale & Co.'s indebtedness to appellees, or in respect to the manner in which such indebtedness was secured. The forbearance of a creditor to crush out a struggling debtor upon the first opportunity, with a view of enabling him to overcome business misfortunes, ought not to be converted by judicial construction into a species of fraud. On the contrary, so long as the creditor's conduct is characterized by good faith, as was evidently the case here, such forbearance should be regarded by the courts with favor, rather than otherwise.

As respects even preferential securities, for the recording of which the Illinois law makes provision, mere intentional withholding from record is not *per se* fraudulent.

Field v. *Ridgely*, 116 Ill., 424.

Haas v. *Sternbach*, 156 Ill., 44.

In the former case, where a mortgage was attacked as fraudulent because withheld from record for five years, the court upheld it, saying:

"We are aware of no principle outside of self-interest and prudence in business, that requires the holder of a mortgage to put it on record at any particular time."

In the latter case, the court said:

"It cannot, therefore, be said that the mere omission to record is fraudulent *per se* as to subsequent creditors of, or purchasers from, the mortgagor. * * * If withholding an instrument from record is fraudulent because of an agreement or other reason for so doing, it is not so *per se*, but in fact. In other words, whenever the motive is involved, the question becomes one of intention —actual fraud as distinguished from fraud in law— and so the question has generally been presented and disposed of."

Thus, in Illinois, it is the settled law that intentional secrecy respecting a preference without "fraudulent intent as to other creditors" does not make it constructively fraudulent.

This court has, in effect, held the same doctrine.

In *Smith* v. *Craft*, 123 U. S., 436, already referred to, the promise to prefer was kept secret and was unknown to the attacking creditor at the time he gave credit to the debtor, and yet this court held this not fraud *per se*, but only voidable in case of actual fraud.

See, also, *Sawyer* v. *Turpin*, 91 U. S., 114.

This court, in *Sanford Tool Company* v. *Howe*, 157 U. S., 312, as well as the Circuit Court of Appeals (speaking through Mr. Justice Harlan) in *Sutton* v. *Hutchinson*, 63 Fed. Rep., 496, recognized the right of an embarrassed corporation to try to outlive its financial difficulties, and for that purpose to give securities which might ripen into preferences in case of failure. This right would be very unsubstantial, if the law couples with it

a duty of the company to make public its embarrassment and the means it is resorting to to overcome it. In the case at bar, as Mr. Justice Brown says, "publicity doubtless would have destroyed the entire scheme of raising money to carry on the business."

Fargo & Co. through the $50,000 of new money it obtained in January, and because its real condition was not known by its general creditors, was enabled for several months to continue its struggle to live and pay its creditors in full. Had it succeeded—as many corporations similarly situated have done—none would have questioned the honesty of its conduct. This emphasizes the fact that secrecy concerning such arrangements by insolvent debtors is not of itself a fraud. Doubtless it may be an element of fraud, but it is as often the means of *preventing* the failure of embarrassed debtors. It is therefore the purpose or intent, not the fact, of secrecy, that should control.

What is here said of secrecy concerning judgment notes is equally true of the secrecy respecting the change of directors. The law of Illinois did not require public notice of a change of directors. Creditors were left to ascertain by inquiry, if to their interest to do so, the personnel of the directory.

It follows that, as the secrecy concerning the January transactions was without fraudulent or dishonest motive, the preferences to the Rubber Companies cannot upon the ground of secrecy be held constructively fraudulent.

Did the change of directors make the preferences to the Rubber Companies constructively fraudulent?

The facts concerning this are as follows:

The Fargo Company in the January arrangement

agreed that "it should not give any judgment notes to other creditors which would impair the security of the Rubber Companies," that five of the then directors should resign and the stockholders should elect five new directors, to be nominated by Mr. Beale, and that "the directors so to be elected at Beale's nomination should not hamper or interfere with the proper carrying on of the ordinary business of the company," that "the only purpose and object of changing the board of directors as aforesaid, and amending the by-laws [by vesting in the directory the exclusive power to give judgment notes, etc.] was to protect the Rubber Companies against the giving by the Fargo Company of preferential security or judgment notes, which should be superior to the security of the Rubber Companies," that "the arrangement as made was carried out in good faith by the parties, and that the directors elected at the suggestion of Mr. Beale took no part in the active management of the Fargo Company after their election, and that no directors' meetings of Fargo & Co. were held after January 9, 1896, until August 5, 1896." These findings of the master are not controverted by the lower courts. Mr. Justice BROWN said (Rec., 736): "The device of changing the directors was evidently not for the purpose of giving up control of the business, but only to secure the arrangement that no other judgment notes should be given, and, as a matter of fact, the new directory did not interfere with the business of the company as conducted by the Fargos. Indeed, no meeting of the directors was held after the change was made." The evidence is undisputed that after the election of these directors, as well as before, the business was managed and conducted by the three Fargos in the interest of the

company and to the advantage of its creditors generally. (Rec., 162.)

Furthermore no injury to the creditors from this change of directors is shown. It does not appear that the Fargos during this period wished or were willing to prefer any of the other creditors, except the Metropolitan National Bank. When in August they desired to prefer that bank the new directory by a resolution authorized it; and, as stated by Judge GROSSCUP (Rec., 636 B.), "none of the other creditors attempted to obtain such [judgment] notes or any other preference before the general crash," and the arrangement "did not do any actual injury to the other creditors."

What then is here disclosed is simply an agreement made by a "going" corporation that a preferential security (through which a new loan was obtained with which to continue business and attempt to overcome embarrassment) should not be impaired by preferential judgments to other creditors, a change of directors *solely for the purpose of assuring the performance of this agreement*, and the absence of any actual injury resulting therefrom to the company's other creditors.

The question thus presented is whether this change of directors for the purpose and to the extent above indicated is constructively fraudulent when made, as the master finds, in good faith and without actual fraud.

This change of directors was not *per se* fraudulent regardless of the motive or purpose. In Illinois the right to elect directors is vested exclusively in the stockholders, whose motives the law does not concern itself with. They certainly may elect directors with a view to inspire

in those with whom the company deals a confidence that its contracts will be fulfilled. They may—and frequently do—elect such directors as those dealing with the company nominate or suggest.

In *Kitchen* v. *R. R. Co.*, 69 Mo., 224 (page 242), an agreement that capitalists about to advance money to an embarrassed railroad company should have a "controlling voice in the directory in order that the money "furnished might be thus [as agreed] applied and result "in giving them ample security for their investment," was held not constructively fraudulent.

See also,

Leavenworth v. *Chicago Ry. Co.*, 134 U. S., 704.

So the stockholders of a corporation can, in their discretion, select as its directors some of its creditors. There is no inconsistency in one's being at once a creditor aud a director. The law permits a director to deal with his company and thereby become its creditor.

Harts v. *Brown*, 77 Ill., 226.
Sandford Tool Co v. *Howe*, *supra*.

Why may not, then, a creditor become a director if the stockholders wish it? Even if these Rubber Companies had been partnerships and five of their members had been elected directors, this would have infringed no right of creditors.

But the persons elected directors were not creditors, but clerks in the office of the counsel of the Rubber Companies, one being also assistant Corporation Counsel of the City of Chicago, and they were elected by a unanimous vote of the stockholders. It is not

claimed that they were not by character and capacity qualified to be upright and intelligent directors; nor is there any evidence that they were, or were expected to be, improperly influenced in discharging their duties as directors by this relationship to the attorney of the Rubber Companies. At most it only gave the attorney a certain moral influence.

But such moral influence, even in the case of stockholders whose votes elect the directors, is neither illegal nor justifies the charge that the directors are "controlled" in any improper sense by those who elect them.

Leavenworth v. *Chicago R. Co.*, 134 U. S., 688, 704 *et seq.*

Porter v. *Pittsburg Bessemer Steel Co.*, 120 U. S., 649.

Pullman Palace Car Co. v. *Missouri Pacific*, 115 U. S., 587, 596.

Higgins v. *Lansingh*, 154 Ill., 357.

Bank v. *Allen*, 33 C. C. A., 169.

In the last of these cases (which in many of its features resembles the case at bar) the preferred creditor was a bank, and the debtor a mercantile company, whose business was conducted by its president, who was one of three directors, the other two being the bank's assistant cashier and a bookkeeper recommended to the debtor by the bank, and the bank held most of the stock of the mercantile company as security, but the Circuit Court of Appeals for the Eighth Circuit, in upholding the preference, said:

"In view of these considerations, we are unable to discover any reasons which will warrant a ruling that the control which the bank exercised over the mercantile company was tantamount to a secret lien on its property,

and for that reason fraudulent. Such influence as it exercised over the mercantile company it had acquired by means which the law esteems lawful. It concealed no fact which the law required it to make known. Moreover, it had no legal power to control the corporation, since the majority of that company's directors were under no obligations to the bank which can be assumed to have rendered them unduly subservient to its wishes."

Nor will the law assume in the absence of proof that these directors—although elected upon the nomination of Mr. Beale—were to, or would, act illegally or fraudulently.

Allen v. *Wilson*, 28 F. R., 677
Rogers v. *Nashville Ry. Co.*, 91 F. R., 299, at page 313.

Clearly, then, the creditors of Fargo & Co. cannot complain of the mere selection by its stockholders of Mr. Beale's nominees as directors. It being lawful for stockholders to select them, it was not unlawful to *agree* to do so. Hence neither the agreement to elect, nor the election of, these directors constituted in *itself* a legal fraud.

Not that the selection of directors may not be a part of a fraudulent scheme. In such case, however, it must be a means to a fraudulent end. There the fraud arises—not from the fact of such selection—but from its purpose. As the "only purpose and object" of this change of directors was to carry out the company's agreement not to give their other creditors an equal or superior preference, the real question is whether such an agreement is a fraud on its other creditors.

While all the learned judges in the lower courts seem to have regarded the change of directors as an element of fraud, the opinion of but one (Judge GROSSCUP) states the reasons therefor. He says (Rec., p. 636 a):

"The vice in the conduct of the Rubber Company and the Candee Company consists in their attempting to tie up the corporation against the power to give like preferences in favor of others."

The supposed vice, then, when this transaction is fundamentally considered, is not the change of directors, but the agreement to restrict Fargo & Co.'s power to prefer other creditors. The question, then, is not confined to corporations, but concerns individuals as well. A corporation's right to prefer creditors (other than directors) is identical with that of an individual. Hence, the creditors of an individual are as much wronged as the creditors of a corporation, by an agreement or other pre-arranged purpose to "tie up" their debtor's power to prefer them.

Hence the real question is whether an agreement or arrangement by a debtor, either individual or corporate, that a preferential judgment note (in part securing a present loan) should not be impaired by subsequent preferences to others, is a fraud upon *creditors*. If so, it must be—since every wrong implies the existence of a right—because it infringes some *right* of the creditors.

What right of creditors, then, is here infringed? This involves the consideration of what, and whose, is this right to prefer. Property includes the right to dispose of (as well as use) the thing possessed. This right to transfer includes the right of a debtor to assign his property to his creditor in payment of, or as security for, his debt. This latter right—commonly known in the case of an insolvent debtor as the right to prefer—continues so long as the owner retains dominion over his property. It is subject to but two limitations—the right of the state to provide by bankrupt or insolvent laws for the ratable distribution of an insolvent's estate, and a limitation pro-

hibiting conveyances by him with the intent to hinder, delay or defraud creditors. Subject to these two limitations—well established long prior to the adoption of the Federal or any state constitution—this right to prefer is as completely within the constitutional guaranty of protection as any other property right.

This right to prefer, being based upon *jus disponendi* which the owner of property retains so long as his ownership continues, precludes the idea that a debtor's creditors have any legal interest in its exercise. It is exclusively the debtor's. He may exercise it or not, as he pleases. His motives cannot be inquired into. He may, if the debt be *bona fide*, exercise it as to all, or a part of the property, at any time he sees fit, and in favor of any one, even the least meritorious, of his creditors. His exercise of it, or his failure to exercise it, or his exercise of it in a particular way, infringes no right of his creditors.

Is it not then illogical to say that a debtor, may not, especially to obtain a loan, submit to a self-imposed restriction upon his future power to prefer, or may not stipulate for the order of priority of his preferences—which is all Fargo & Co. did in this case?

He may by non-action, or by an actual transfer of all his property to one creditor, or by giving one judgment note of sufficient size to absorb his entire assets and afterwards refraining from giving others, perfer exclusively one creditor. So by the actual exercise of his power to prefer (in point of time or otherwise) he may in fact lawfully create such order of priority in his preferences as he sees fit. If so, how is it unlawful for him to agree to do so?

If it infringes the right of creditors "to tie up" the debtor's right to prefer, then an agreement by Fargo & Co. in January to give no preferences *at all* in case of subsequent failure would have been equally illegal. All this is repugnant to the very nature of the right to prefer.

The position of the lower courts on this point seems based upon a supposed right of creditors to have this power to prefer kept free and untrammeled, at least until exercised in a public manner. If such right exists it involves—in the case of a corporation—a correlative duty of its directors. If its creditors have this right, they must be allowed to insist that directors—from whom their preferences must emanate—should not in dealing with their corporation place themselves in a position where their self-interest will conflict with this duty to creditors.

Such is human nature that no corporation will often give a preference to others that impairs previous preferences to a majority of its directors. Here is a situation arising from self-interest that is as potent "to tie the hands of the corporation against the power to give like preferences in favor of others" as would be an agreement of the corporation. If one is fraudulent equity must also condemn the other.

Hence, this new theory, if it is to be engrafted upon the law, must be carried to its logical conclusion by annulling all preferences to directors, especially to a majority of the directors.

But this is inconsistent with *Sanford Tool Co.* v. *Howe*, 157 U. S., 312, and *Illinois Steel Co.* v. *O'Donnell*, 156 Ill., 624.

In the *Sanford Tool* case an insolvent, but "going,"

corporation gave in good faith, and with a view to continuing its business, a mortgage upon its manufacturing plant to indemnify a majority of its directors for their endorsements of prior notes, and on account of moneys thereafter to be, and subsequently, advanced. In the Circuit Court (44 Fed., 231), Judge Woods held the mortgage a fraudulent preference, saying: (italics ours.)

"Whether or not such preferences are fairly given is an impracticable inquiry, because there can be in ordinary cases no means of discovering the truth; and consequently, the presumption to the contrary should in every case be conclusive. Concede that it is a question of proof, and that a preference in favor of a director will be deemed valid if fairly given, and it may as well be declared to be a part of the law of corporations that in case of insolvency debts to creditors and liabilities in which they have a special interest must be first discharged. That will be the practical effect, and the examples will multiply of individual enterprises prosecuted under the guise of corporate organization, for the purpose, not only of escaping the ordinary risks of business, done in the owner's name, which may be legitimate enough, but of enabling the promoters and managers, when failure comes, to appropriate the remains of the wreck by declaring themselves favored creditors. Besides inconsistency with that equality which equity loves, such favors involve too many *possibilities* of dishonesty and successful fraud to be tolerated in an enlightened system of jurisprudence."

Compare the foregoing with the following from the opinion of Judge Woods in this case: (italics ours.)

"As a judicially sanctioned or commercially accepted *possibility* in business it is unbelieveable. It could be attempted only by a corporate debtor, and its approval by the courts would afford a new and fruitful motive for the creation of corporations by the many who would be quick to avail themselves of so promising a method of pursuing hazardous enterprises at the risk of others" and it will be seen that the learned judge has applied

the same reasoning to the decision of both cases. In neither is the preferential transaction judged by its own facts and with reference to the actual intention of the parties to it. In both it is the "possibility" in other cases that condemns. Each case is not allowed to stand upon its own bottom, but transactions which are perfectly honest and entered into in good faith in order to enable the corporation to outlive, if possible, present embarrassments, are vigorously condemned because *other* cases might be dishonest and difficult to prove so.

When the *Sanford Tool case* reached this court, it rejected this line of reasoning, upheld the preferential arrangement Judge Woods had condemned, and thereby established the principle that each such case must be decided upon its own facts, and that a preferential arrangement, *even with directors*, for the purpose in part of getting new money with which to strive to outlive present financial embarrassment, when entered into in good faith, must be upheld.

This is in harmony with the tendency of this and other courts not to hold transfers to creditors as constructively fraudulent, but to make each such transfer depend upon the actual intention therein.

Etheridge v. *Sperry*, 139 U. S., 266–278.
Huntly v. *Kingman*, 152 U. S., 527–532.
Smith v. *Craft*, 123 U. S., 436.
Jewell v. *Knight*, 123 U. S., 426.

In the first of these cases where the question was whether, as a matter of law, a mortgage given by a merchant on his stock of goods to his creditor was invalidated by a parol understanding that the mortgagor might use the proceeds of his sales to support himself and keep up the stock by purchase, this court (Mr. Justice Brewer) said:

"The fact that fraudulent relations are possible is hardly a sufficent reason for denouncing transactions which are not fraudulent. So if the question were open or a new one unaffected by any settled law of the state, we incline to the opinion that the question is not one of law so much as it is one of fact and good faith, and that the decision of the Supreme Court of Iowa rests on sound principles."

So measured, the transaction at bar must be upheld, While in January the corporation was insolvent, as subse quent events proved, all the parties entered into the arrangement in good faith and with a view to aiding the company to outlive what was supposed to be its temporary embarrassment. While old indebtedness was secured, new money was also thereby obtained. It cannot in this respect be differentiated from the *Sanford Tool case*.

The *Sanford Tool case* is like the case at bar in another particular yet to be noted. The preferences there were to a *majority* of its directors. This was also true in *Illinois Steel Company* v. *O' Donnell*, *supra*, where judgment notes given to *three* of its five directors (and kept secret for several months) by an insolvent, but "going," corporation, to secure or prefer them for a present advance of money made to enable the company to continue its business, were upheld by the Supreme Court of Illinois.

In both the *Sanford Tool* and the *O' Donnell* cases the preferred creditors continued to be directors until the failure, and the effect of the preferences was "to tie up the corporation against the power to give like preferences in favor of others." True, there was no *agreement* to this effect, but it was the self-interest of the directory in each of these cases not to give others preferences which might impair their own. In legal effect the cases can-

not in this respect be distinguished from the case at bar. The agreement at bar, supplemented by the election of directors from the office of the Rubber Companies' counsel, did not create one iota more of "inability" by the corporation to subsequently "give like preferences" than existed in the *Sanford Tool* and *O'Donnell* cases. This inability, in each case, arose from the composition of the board of directors, supplemented in the case at bar by an agreement, and in the others by self-interest. Had the Rubber Companies been firms, and had five of their members been elected directors instead of clerks from their counsel's office, this agreement would have added nothing to the situation. Their self-interest would have been sufficient. In that event this case would have differed from the *Sanford Tool* and *O'Donnell* cases only in that the interested directors in the latter cases were elected before the preferences were given, and, in the present case, afterwards. The supposed unlawful result, however, would be the same.

This position of the lower court is equally at variance with the cases which sustain an undisclosed preference to a single director. For if creditors of a corporation are entitled to the unbiased and free exercise of the right to prefer, this is likewise impaired (although in lesser degree) when *one* director is preferred.

It is therefore respectfully urged that neither the change of, nor the agreement to change, directors made these preferences fraudulent.

It is also said in the majority opinion of the Court of Appeals to have been a fraud upon the law to constitute directors and a treasurer who from the beginning were "pledged not to give attention to their duties, or to

participate in the management of the business of the corporation further than to protect the rights of particular creditors, in whose interest alone they were given their places."

This alleged pledge is not here treated as an evidentiary fact. As such the master doubtless gave it its proper weight when deciding there was no fraud in fact. But it is here made an independent, and in itself sufficient, ground of fraud in law; and in that light, it is proposed now to consider it.

As respects the treasurer, the question does not arise upon this record. The bill does not aver, the master's report does not recite, and the exceptions to the master's report do not claim, that the treasurer was pledged to neglect his duty or refrain from participating in the management of the business.

Nor is there anything in this record to sustain the charge that the directors were pledged not to give attention to their duties. All that it shows is an agreement (see master's report) that the directors "should not hamper or interfere with the *proper* carrying on of the *ordinary* business of the company."

Nor is there evidence that these directors did in fact fail to give attention to their duties. All that is disclosed is that they elected the officers and thereafter "took no part in the *active management* of the company." This constituted no failure to discharge their duties.

The duties of directors involve only the exercise of general corporate powers. The law does not require them to actively participate in the conduct of the company's business. They fully meet the requirements of their office in this respect when they select officers and agents to conduct the business.

But this position, it seems to us, is based upon a misconception of the legal rights of creditors respecting the internal management of a corporation. By "fraud on the law," must be here meant fraud upon the creditors. Creditors may avoid a fraudulent conveyance by a corporation. Beyond this no cause of action arises in favor of crediors by reason of the management of a corporation. Neglect of duty by an officer or director, or even the failure to elect an officer or director, gives creditors no cause of action. Stockholders and their representatives, the directors, may exercise their own discretion in selecting, and in fixing the amount of active service required of, a treasurer. When a treasurer or director is elected, he owes a duty, and is answerable, only to the company and its stockholders. A corporation does not owe it to its creditors to exact any amount or degree of service from a director or officer. If the corporation, its directors and stockholders are willing—as they were in the case at bar—that the treasurer yield the practical work of his office to an assistant of their selection, creditors are in no legal position to complain. It is neither a fraud upon them, nor upon stockholders, nor upon the law.

A majority of the Court of Appeals lay some stress upon the fact that the name of the former treasurer was upon the stationery used after the change. In other words, Fargo & Co. continued to use up the stationery then on hand. There is no evidence that this was done to mislead creditors, or that the Rubber Companies knew or approved of it. It may be equally charged to inadvertence, and be disregarded upon the principle that when an act is equally consistent with an honest and dishonest motive, an honest motive is to be presumed. At

best it is but an evidentiary fact of small weight, and was doubtless given its proper proportion in connection with the other evidentiary facts by the master and the trial judge who confirmed his report.

To sum up this phase of the case, a transfer by a debtor to his creditor is not constructively fraudulent unless it is so "plainly inconsistent with an honest purpose" that the law will conclusively presume a fraudulent intent, and will not allow proof to the contrary. (*Huntley* v. *Kingman*, *supra.*) But of the preferential transaction here in controversy Justice BROWN says:

"The evidence satisfies me that there was a *bona fide* attempt to assist the Fargo Company in continuing its business with the hope of ultimately pulling it through, and that if this attempt had been successful it would have redounded greatly to the interest of the general creditors."

He might have gone farther and said that the transaction did in fact benefit the creditors as a whole by reducing the aggregate of their indebtedness.

How can a transaction which might redound, or did in fact redound, to the interest of complaining creditors be "plainly inconsistent with an honest purpose" towards those creditors?

THE PREFERENCE TO THE METROPOLITAN BANK WAS NOT CONSTRUCTIVELY FRAUDULENT.

The facts found by the Master in this branch of the case have already been set out *in extenso* and (except in the particulars above indicated) are apparently not questioned by any of the judges below. It thus appears that this bank was a stranger to the preferential arrangement in January. It was, however, Fargo & Co.'s banker, and

about the 3rd of the following August Fargo & Co. was indebted to it in the sum of $40,000 for money loaned. No person connected with the bank was in any way connected with Fargo & Co. Hence under the Illinois law Fargo & Co., although its failure was then in the contemplation of both parties, could lawfully have preferred this bank by a judgment note for this $40,000.

But on that day C. E. Fargo, its president, applied to this bank for an additional loan of $10,000, representing that Fargo & Co. was indebted to him and his brothers for more than that sum, which they had borrowed for the use and benefit of their company from a Michigan bank upon their individual notes with bank stock belonging to them individually as collateral, and that the company had received and used this money in its business. He then proposed to the bank that, if it would loan Fargo & Co. $10,000 in addition to its then existing loan, so that it could repay him and his brothers, and thus enable them to take up their notes to the Michigan bank, Fargo & Co. would give the Metropolitan Bank two judgment notes for $25,000 each to cover its entire loan. This the bank assented to, loaned the $10,000 (which was deposited to the company's credit), and received two judgment notes, in payment of one of which the bank immediately accepted a conveyance of the equity in the Dixon factory (which afterwards proved worthless), and the other note is the one upon which judgment was entered in favor of the bank, as stated at the outset.

No attempt was made by respondents, upon whom was the burden of proof, to prove that the facts thus stated by Mr. Fargo to the bank were not true, or that the bank's president did not believe them, or had any reason for not doing so. We are, therefore, in judging the bank's con-

duct, to assume that these representations were true in fact, and were relied on by it in making the loan.

The lower courts held these judgment notes constructively fraudulent *in toto*, the Court of Appeals basing its decision in part upon *Sutton Mfg. Co.* v. *Hutchinson*, 23 U S. App., 145, which condemns preferences by a corporation to its directors on the eve of its failure, and also upon the ground that the bank had entered into an "entangling alliance" with the Rubber Companies.

First. Do these judgment notes to the bank violate the rule against preferences to directors? If so, it must be because of the $10,000 transaction, as Fargo & Co. could unquestionably at that time have given preferences for the $40,000 previously due the bank.

Judge Grosscup, in his opinion, says:

"Under these circumstances, I see no reason why the Metropolitan Bank had not a right to advance the $10,000 additional money."

Becoming lawfully a creditor, why could it not take a preference for this additional loan?

The fact that the Fargos were personally liable on the notes and had pledged their individual stock as collateral thereto only put them in a position akin to that of endorsers. But this relation did not incapacitate Fargo & Co. from giving the preference. (See cases cited above and also *Sanford Tool Company* v. *Howe*, *supra*.)

One may lawfully loan money to a corporation on the eve of its failure, and take a preferential security therefor, if it is done in good faith and with honest intent. This bank could lawfully have loaned Fargo & Co. $10,000 at the time it did, and have taken contemporaneously a judgment note therefor, although it then knew that Fargo & Co. were about to fail, provided that it did so in good

faith, and in the reasonable belief that the money was to be lawfully used. If, for instance, Fargo & Co., in anticipation of its failure, had borrowed this money from the bank to pay off its employes, a judgment note given therefor would be upheld. So, if the notes held by the Michigan bank had been those of the Fargo Company, the latter could lawfully have given the Metropolitan Bank, on the eve of its failure, a judgmeut note for money then borrowed to pay the Michigan bank. The preferences to the Metropolitan Bank, under the circumstances here supposed, would be but a substitution of one creditor for another, either of whom could be lawfully preferred upon the eve of failure.

This would be equally true in the cases supposed, although the Fargo Company, after getting the money, dishonestly applied it to other and improper purposes. In each case the test should be whether the money was loaned by the bank in good faith and a reasonable belief on its part that it was to be properly applied. If so, the lender cannot be held guilty of either actual or constructive fraud.

Is the case then changed because the notes held by the Michigan bank were the notes of the individual Fargos? The debt in form is that of the individuals. But the money for which the notes were given having been borrowed for, and used in the business of, the company, is not the company in reality and in a court of equity to be regarded, especially on the question of fraud, *as the real debtor* to the Michigan bank?

That it is to be so regarded is shown by

Poole v. *West Point Association*, 30 Fed. Rep., 513,

This association was a Nebraska corporation and one Brown was its president. The Middleton bank had advanced moneys directly to the corporation, and also advanced moneys to Brown, *who had expended the same for the benefit of the corporation.* These last advances the stockholders of the corporation had attempted to secure by pledging their shares of stock with the bank. The receiver of said Middleton Bank sought in equity to recover the moneys advanced to Brown as a debt of the corporation. It was held that he could do so.

Mr. Justice BREWER (page 518), said:

"I notice, second, the claim of the cross-complainant, the receiver of the Middleton Bank. His claim arises for moneys advanced by the bank directly to the association, and also for moneys advanced by it to Brown, which were by him expended for the benefit of the association, and which were recognized by the association informally as debts of the association, and which were attempted to be secured by an assignment to the bank by each stockholder personally of his shares. *I think equity will jump all intermediate transactions, and treat both amounts as debts from the association to the cross-complainant.*"

In *West* v. *Hanson Produce Co.*, 6 Col. App., 467, money was borrowed for an insolvent corporation, but the bank would not take the company's note for it and the three directors gave their notes direct to the bank for its payment. The Court of Appeals upheld the preference by the company of this debt, and, while disapproving the rule prohibiting preferences to directors, held the question was not involved *because the debt was that of the company.*

Fundamentally considered then, the Metropolitan Bank in August but loaned the Fargo Company $10,000 with which to pay its own debt to the Michigan bank.

Certainly under these circumstances the right to give a preference for this $10,000 is as undoubted as is the right to give a preference for the $40,000 previously loaned.

If this were otherwise it should not avoid *in toto* the bank's preference. To the extent of $40,000 the right to prefer did exist and ought to be upheld.

A different rule might arise if the $10,000 transaction showed actual fraud on the part of the bank. But it does not. It shows at the worst only concurrence in a preference for a *bona fide* debt, and this is not actual fraud, if fraud at all.

We do not here overlook *Atwood* v. *American Exchange Bank*, 152 Ill., 605, which differs from the case at bar in that there the creditor taking a preferential judgment was a stockholder, and as such was held to have been wanting in the candor and good faith required of stockholders in that he permitted the use of his name as a cover to obtain for the directors an unlawful preference. The judgment in that case included a debt due the directors. It seems to have been regarded as a case of actual fraud.

Second. Does the so-called "entangling alliance" between the bank and the Rubber Companies invalidate the otherwise valid preferences of either?

What is said to have this effect is the agreement entered into by these petitioners on the 6th of August, and set out on page 385 of the record. It recites that the parties are large creditors of Fargo & Co., that the bank is about to accept a conveyance of the factory in part satisfaction of its debt, that the Rubber Companies are about to receive an assignment of accounts as security for their claims, and that the parties are about to enter up

judgments upon their claims and that they are to "unite their efforts to collect their respective claims against said company and share *pro rata* in the results thereof."

The *purpose* of this arrangement is both apparent and legitimate. Each of the parties had judgment notes deemed valid preferences. Each was about to reduce the same to judgment and execution, the Rubber Companies in the federal court, and the bank (by necessity) in the state court. This agreement not only reduced legal expenses, but avoided a race between the parties for priority in liens.

All that they agreed to do was to unite their efforts to collect their claims; or, in other words, to assist each other, so far, and only so far, as could legally be done, the law presuming they only intended what was legal.

Doubtless they contemplated a legal assertion of their preferences, if questioned; but it is not a fraud for a creditor to assert, or maintain in court, the validity of a preferential judgment note in fact invalid. No penalty or punishment is incurred by the unsuccessful assertion of a preference. (See cases cited under point III.) If this is true of one party, it is equally so where two unite in the assertion of preferences. The purpose of this agreement was lawful. It is consistent with the good faith which the master finds.

The legal *result* of this agrement was a partial assignment of its preference by each of the parties to the other. If the preference of either, considered by itself, was not illegal, it did not become so because in part assigned to the other. The validity of each preference depends upon its own facts, and these are not

changed by a partial assignment thereof. If either preference is avoided the assignee thereof loses to the extent of his interest therein and no more. He stands in his assignor's shoes, and the consequence to him of relying upon the preference would be the same as to his assignor.

But the position of a majority of the Court of Appeals seems to be that a valid preference, to the extent that it is transferred by partial assignment, loses its validity because the assignee is also asserting another independent preference against the same debtor, which is illegal, and that a legal preference is also invalidated because the preferred creditor takes an assignment of another independent preference which is illegal. This imposes a penalty upon the mere assertion of the preference when assigned that does not exist when not. Valid preferences thus lose their validity when assigned to some persons, but retain it when assigned to others. The assignability of valid claims is thus impaired by reducing the number of persons that may become assignees.

To support these propositions no authorities are cited and we find none. They are applied to the case at bar, although the Master has found that the Metropolitan Bank in no way participated in, or had knowledge of, the facts which are relied on to make the Rubber Companies' preferences illegal, nor did the Rubber Companies participate in, or have knowledge of, the features of the $10,000 transaction which are thought to make the bank's preference fraudulent.

The real objection which the majority of the Court of Appeals expresses to this "entangling alliance" is that, if it be given effect, the Rubber Com-

panies would get *something* as assignees of the bank's preference, whereas the court wants them to get *nothing*. But is not this imposing punishment rather than deciding legal rights, and imposing punishment too upon parties who throughout the transaction have acted in good faith and without intentional fraud?

It is therefore claimed that neither by reason of this "alliance" between petitioners nor other circumstances shown were the preferences to the petitioners constructively fraudulent.

III.

THE RIGHT TO PRO-RATE.

Assuming the preferences to be fraudulent, the question remains whether petitioners are entitled to share *pro rata* with the other creditors.

We understand all the judges below to concede that in taking their preferences they "had no conscious purpose to harm either present or future creditors." Hence the question here is whether a creditor, attempting to take a preference at the time when, and in a state where, preferences were lawful, *with no conscious purpose to harm either present or future creditors*, should be denied the right to share *pro rata* in the insolvent estate, because the particular preference he takes is adjudged contrary to law.

The majority of the Court of Appeals decided this in the affirmative. Mr. Justice BROWN and Judge GROSSCUP held the contrary, Mr. Justice BROWN saying (Rec., 736):

"Upon the whole it does not seem to me that such a case of fraud is made out as authorizes the court to post-

pone the claims of the preferred creditors to those of the general creditors and thereby to practically confiscate them; and that there is no sound reason for departing from the general rule laid down by the Supreme Court in *White* v. *Cotzhausen*, 129 U. S., 329; and *Streeter* v. *Jefferson County Bank*, 147 U. S., 36, wherein the preferred creditors were permitted, after their security had been set aside, to stand upon an equality with the general creditors."

Judge GROSSCUP said (Rec., 636 b):

"This [the question of pro rating] is wholly a matter of conscience: the application of justice to the special matter in hand. It cannot be helped much by what other courts have done under other circumstances. * * * It [the particular method of preference here resorted to] was in a certain sense a new attempt; it was in the line of efforts of creditors to secure themselves; it was, on the whole, not ungenerous to Fargo & Co., and did not, considering their rights to have taken judgment notes, and the fact that none of the other creditors attempted to obtain such notes or any other preference before the general crash, do any actual injury to the other creditors. On the whole, I think the interests of justice will be best subserved by placing them in the class with the other creditors and compelling them to pay the general costs of this litigation."

Judge WOODS, in giving his reasons why the bank should not be allowed to share, says:

"Moreover, the bank, if permitted to share in the fund to be distributed, the Rubber Companies being excluded, would receive in proportion more than if the preferences had been upheld and the division were made between it and the Rubber Companies."

In addition to the decisions of this court cited by Mr. Justice Brown, are the following authorities:

In *Brown* v. *Morristown Stove Company*, 42 S. W., 161 (Tenn., 1897), where the court set aside as an illegal preference a sale by a corporation to its treasurer of its assets in payment of its debt to him, the court said:

"We do not think the position taken by the general creditors under this writ of error, that Holston [the preferred creditor] is not entitled to participate as a creditor in the distribution of the assets of the corporation, is well taken. Resistance to the evidence of the sale to him on the ground of its illegality does not debar him as a creditor or destroy his debt. * * * The effect of avoiding a sale in a case of this kind is, as we understand the law, to place the property of the corporation, as a trust fund, under the control of the court for equal distribution among all its creditors."

See, also, to like effect,

Comer v. *Tabler*, 44 Fed., 467.
In re Reed, 3 Fed. Rep., 798.
In re Cadwell, 17 Fed. Rep., 693.
Phelps v. *Curts*, 80 Ill., 109.
Lobstein v. *Lehn*, 120 Ill., 549.
Riggs v. *Murray*, 2 John. Ch., 565.

Let us apply first the principle of these cases to the Rubber Companies. They have only made an unsuccessful attempt to secure preferenees. Their *motive* in seeking a preference is, in Illinois, recognized as legitimate. If unsuccessful, it is not because they have sought what the law inhibits, but because, under legal advice and without intention to wrong the other creditors they have adopted a *method* which the law will not sanction.

If, as intimated in *Clements* v. *Moore*, 6 Wall., 312, and by Judge Grosscup, each case is to be decided—not by an inflexible rule—but according to its own circumstances, upon what ground can the Rubber Companies be fairly denied the right to pro rate? A corporation, of which they were the largest creditors became embarrassed and its officers desired to overcome—as they had a right to attempt to do (*Sanford Tool Company* v. *Howe*, 157

U. S., 312)—difficulties which they regarded as but temporary. The Rubber Companies were willing to aid by advancing $50,000, if the Fargo Company would—as it lawfully might (*Sanford Tool Company* case, *supra*)—secure their existing debts, and an arrangement was concluded under which the Fargo Company procured $50,000 of new money to be "used in reduction of its general indebtedness as it matured" (Master's report, p. 161), and was thus enabled for seven months to continue its struggle for business life.

Had the January arrangement fulfilled the expectations which the master finds were entertained by the parties to it, all creditors would have been paid in full, and the respondents would have profited by it as much as the petitioners. Though it failed, it resulted in no real injury to the general creditors. While counsel say much about the injustice resulting from such creditors being "drawn in" to give credit, the master reports and the uncontradicted evidence shows that, taken as a whole, they were not "drawn in," but "paid out," by that arrangement to the extent of some $67,000, while the debts due the Rubber Companies were reduced but a few thousand dollars.

In January the Rubber Companies could lawfully have taken preferential judgment notes to be immediately entered. Hence the general creditors, considered collectively, were better off under this arrangement than they would have been, if in lieu thereof a cessation of business followed by these preferences had then taken place.

As to the Metropolitan Bank. The case of this bank need not be here further discussed. As already shown, its conduct, conceding all that can be claimed, amounts only to its concurrence in an unsuccessful attempt by the

Fargos to obtain from their company, on the eve of its failure, a preferential payment of a debt honestly due by it to them. But an unsuccessful attempt, even of a director, to secure a preference from his company, should not work a forfeiture of his debt. (*Brown* v. *Morristown Stove Company*, *supra*.)

Hence, the majority of the Circuit Court of Appeals erred in holding that petitioners were not entitled to share *pari passu* with the other creditors.

The judgment of the Circuit Court of Appeals and the decree of the Circuit Court should be reversed and the bill dismissed for want of equity, and the petitioners should recover their costs in all the courts. These should include the costs and expenses of the receivership. Such reversal would in effect decide that the receiver was improperly appointed. All the facts now before this court were disclosed upon the application for the receiver by petitioners' answers. They contested his appointment to their utmost. Under these circumstances their property ought not to be diminished by charging against it the costs of an improper receivership for which respondents are responsible. *Highley* v. *Deane*, 168 Ill., 266; *McAnrow* v. *Martin*, 183 Ill., 467.

Respectfully submitted.

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PETITIONERS,

vs.

AMERICAN OAK LEATHER COMPANY ET AL.,
RESPONDENTS.

CERTIORARI TO CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF FOR PETITIONERS.

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CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITIONERS' REPLY.

I.

THE QUESTION OF SECRECY.

The oral arguments have emphasized the fact that the change of by-laws and directors is no longer seriously relied upon to establish constructive fraud. Counsel, however, rely much upon the intentional silence, or (as they call it) secrecy, to make a case of fraud.

The real question here is *whether an embarrassed debtor*

may lawfully use his right to prefer to aid him in his efforts to "weather the storm." If so, the right to remain silent (when not asked questions) respecting his embarrassment and his efforts to outlive it necessarily exists. To require him to proclaim the preference by which he secures the new loan of money, and thus to deny him the right to continue, as before, to purchase on credit, is to deny him the right to struggle on and use his right to prefer in doing so. Such a law would require him to suspend business as soon as he becomes embarrassed.

Of course the distinction is here to be made—and is overlooked by counsel—between an unqualified *agreement* to keep secret as part of the preferential contract and mere intentional or premeditated silence. The former implies that each party when questioned must misrepresent, and may well be held to indicate a fraudulent purpose on the part of both parties. It contemplates the violation of a legal duty to the creditors—that of not misrepresenting in order to make purchases.

When, however, no agreement to keep secret is shown, all that is implied—or the law will assume—is a purpose to remain silent *so long as* this can be done without violating the legal duty to creditors—that is, until questioned by creditors. This is the real basis of the distinction which is found in the mortgage cases (including Sawyer *vs.* Turpin, 91 U. S., 114, and People's Savings Bank *vs.* Bates, 120 U. S., 556), between an agreement to keep secret and an agreement merely not to record.

In this case there is no evidence, nor finding by the masters, of an *agreement* to keep secret. The insistence of counsel to the contrary but emphasizes their appreciation of the importance of the distinction here made. Their whole argument upon secrecy is founded upon the erroneous assumption that there was such an agreement. The only evidence referred to by them to show an agreement for secrecy was that of Charles E. Fargo, who merely said that it was

the purpose to maintain silence respecting the preferential arrangement. Doubtless that was the purpose of Mr. Fargo, as without it his efforts to outlive temporary embarrassment would be rendered nugatory. This is not evidence that there was in January or at any time an agreement for secrecy or that the arrangement contemplated or required that any one would misrepresent to the creditors. The mere fact that a purpose existed to keep silence is not evidence of a purpose to misrepresent when questioned.

The fact that some of the Fargos afterwards made misrepresentations to three of the company's 170 creditors cannot discredit the purpose or affect the rights of the Rubber Companies. They were not in any way connected with these representations, and it cannot be assumed that either they or the Fargos contemplated that such misrepresentations should be made when entering into the arrangement in January. Besides, the cause of action arising to these three creditors by reason of these misrepresentations is not enforceable in this suit, as is shown by the opinion of Mr. Justice Brown. Creditors not misled to their injury cannot make misrepresentations to others the basis of recovery in a class suit like this.

But it is said that the January arrangement should be condemned because thereafter the business was, and was intended to be, continued at the risk of the general creditors. In all business conducted, as most of it now is, largely on credit, the risk of the business is upon the creditors. Where the right to prefer exists, this risk is increased. It then becomes not only a risk that the debtor may not have property enough, but also that he give it all to a favored creditor to the exclusion of all others. This risk involves not only the giving of the preference at the time of the collapse, but that the debtor may previously make a contract to prefer in case of failure. (See cases in the original Brief, pp. 26, 27.) As the law permits an embarrassed debtor to use his right to prefer to aid him in trying to weather the storm, persons

extending credit to him without inquiry always take the risk that he has already exercised his right to prefer in order to obtain money with which to continue the business.

These risks the law imposes on all persons extending credit. They can only be escaped by withholding credit. To say, then, that the January arrangement is to be condemned because thereafter the business was conducted at the risk of the general creditors is in reality to deny the right of the Fargo Company to make a preferential contract in order to secure money with which to weather the storm.

At the outset Respondents' counsel felt it to be necessary, in order to establish fraud, that the parties should, in January, have contemplated subsequent purchases on credit *in order to increase assets* to be seized by the Rubber Companies in satisfaction of their claims. Failing in the proof of this, they now contend that all that is necessary is to show that the parties, in January, contemplated future purchases on credit. This clearly is not sufficient to show actual fraud. Is it enough to make a case of constructive fraud? Certainly not. Substantially all mercantile business is conducted on credit. Whenever an embarrassed debtor engages in an attempt to weather the storm he contemplates future purchases on credit. As the law sanctions this attempt to weather the storm, it necessarily contemplates future purchases on credit in the effort to do so.

Whenever a bank loans a debtor money with which to continue business and takes a judgment note, both parties contemplate a continuance of purchases on credit without giving publicity to the judgment note. When a mortgage given by one in mercantile business is withheld from the record, purchases on credit while it is so withheld are contemplated. To say that the giving of a lien when followed by the purchase on credit is invalid is to resurrect the exploded theory of "secret liens" and "delusive credit" now so distinctly repudiated in Illinois and most of the States.

See Hegeler *vs.* First National Bank, 129 Ill., 157 (cited in the original brief).

It is contended that the January arrangement was equivalent to a recorded chattel mortgage on a stock in trade while the mortgagor remains in possession and sells the property, and is therefore invalid under the decision in *Robinson vs. Elliot*, 22 Wall., 513 (a case afterwards qualified by *Means vs. Dowd*, 128 U. S., 273, and Huntley *vs.* Kingman, 152 U. S., 527). But in Illinois such a mortgage is valid as to all creditors *except such as acquire liens upon the property before the mortgagee takes possession.*

Read *vs.* Wilson, 22 Ill., 377.
Barchard *vs.* Kohn, 157 Ill., 579.
Pinkstaff *vs.* Cochran, 58 Ill. App., 72.

In Illinois also, chattel mortgages withheld from the record are valid, except as to creditors who acquire liens before the mortgagee records it, or takes possession under it.

Frank *vs.* Minor, 50 Ill., 444.
Chipron *vs.* Feikert, 68 Ill., 284.

In the case at bar the petitioners acquired possession under their executions before the liens of the other creditors had attached. Thus, if, despite the manifest difference between them, the January arrangement be treated as like a chattel mortgage, it is not constructively fraudulent.

The foregoing chattel-mortgage cases also show that the secret lien and delusive credit theory is exploded in Illinois.

In Illinois the distinction between actual and constructive fraud is thus stated in *Lawson vs. Funk*, 108 Ill., 502:

"The authorities clearly establish two distinct grounds upon which conveyances and other contracts will be deemed fraudulent as against creditors: First, such as are entered into with a fraudulent intent; and second, *such as from the terms of the agreement or the nature of the transaction itself are deemed so as a mere inference of law*, without regard to the motives or actual intentions of the contracting parties."

To hold this transaction constructively fraudulent, the court must conclusively infer the fraud from its very terms. Those terms must be "plainly inconsistent with an honest purpose" (Huntley *vs.* Kingman, 157 U. S., 527). They must carry on their face inevitable evidence of a fraudulent purpose, and be such that fraud will result as a *necessary consequence* of their performance (Delaney *vs.* Valentine, 49 N. E. Rep. (N. Y.), 65). Tested by these rules, the transaction was not constructively fraudulent, for we have shown that the element of silence or secrecy was entirely consistent with an honest purpose, and it surely cannot be said that there was anything in the other terms of the transaction inconsistent with such a purpose. The fact that no injury resulted to the general creditors is proof conclusive that there was no plain inconsistency with an honest purpose, and that fraud should not be imputed as matter of law.

II.

ACTUAL FRAUD.

There can be no actual fraud here without a *motive or purpose* of the parties to the January arrangement *to injure, or profit at the expense of, the other creditors.* The keystone of this entire arch of fraud so elaborately sought to be erected by counsel is this motive or purpose. Remove it, and the whole falls. But where is such motive? It is not to be found in the desire or purpose of these parties to increase credit assets upon which to levy, for it is now conceded that this was neither intended nor accomplished.

There was no motive to profit at the expense of other creditors; for the Rubber Companies did not so profit by the arrangement. Under it the indebtedness to the general creditors was reduced at least 20 per cent., while that of the Rubber Companies was reduced but 4 per cent.

Nor can there be imputed to the Fargos any motive other than a desire to avoid failure and preserve their business, for they also profited nothing by the January arrangement. It is sought to find an improper motive on their part in the fact that in January they were endorsers on $15,000 of the company's paper, which was subsequently paid. But if this was their motive in January the arrangement then made was not necessary. Under the Illinois law this object could have been attained by a direct preference at that time to the creditors holding these $15,000 of notes. The fact that the Fargos were endorsers did not prevent the Fargo Company from then giving such preference. It was not, as claimed, necessary to prolong the company's existence to get rid of the personal liability of the Fargos on these notes.

But in the case of actual fraud there must not only be a motive, but injury to creditors, and none is here shown. While counsel attempted to show injury to particular creditors, it must be apparent that in considering injury, as well as motive, the creditors must be treated as a whole. When so considered, the continuance of the business for the seven months did not injure the general creditors, nor did it better the situation either for the Fargos or the Rubber Companies. Had they entertained in January an improper motive to sacrifice the general creditors, they could have better accomplished it by rendering the preferences effective at once, when the assets were larger than in August.

After all is said, these Respondents concede the right to give these preferences in January, and are only complaining because they were not consummated until August. But this delay inured to their benefit. *Thus their complaint is in reality but the frequent one against the exercise of the right to prefer, and this, too, when the disadvantages to them from the exercise of this right were mitigated by the seven months' continuance of the business.*

III.

INACCURATE STATEMENTS BY RESPONDENTS' COUNSEL.

We desire to call attention here to some of the inaccurate statements into which the zeal of Respondents' counsel has betrayed them.

It was said that of the $50,000 advanced in January $44,900 went right back to the Candee Company in payment of the antecedent indebtedness to that company, which it was also said was evidenced by past-due notes. This is incorrect. The $44,900 of notes of the Candee Company were given in the previous November and matured at different times between January and May 1, 1896. They were paid on the dates on which they became due, just as obligations of other creditors were paid during the same period. The $50,000 advanced went into the business, and there is nothing to show that a single dollar of it was returned to the Candee Company. All that can be said is that during the seven months of operation after the January arrangement over $300,000 were paid out to creditors, including this indebtedness of $44,900 of the Candee Company.

It was also said that in January the Rubber Companies had at stake consigned goods to the extent of $100,000, which by a course of dealing had become commingled with the goods of the Fargo Company so as to be incapable of recovery in case of failure at that time, and that the January arrangement provided for the separation of these goods. It is true that the Fargo Company then had on hand consigned goods of the Rubber Companies, but it is not true that these goods were considered in making the January arrangement, or that any separation of them was then made. Counsel's contention to the contrary rests upon the testimony of one witness to the effect that the consigned goods were discussed in 1896, though this witness afterwards ad-

mitted in substance that he was mistaken (Rec., 345–348), and four witnesses testified positively to the contrary (Rec., 428, 419–421, 498, 499, 504, 559). The entire business of the United States Rubber Company had always been up to that time conducted under consignment contracts like those made with the Fargo Company in April, 1895–1896, as shown in Record, pages 572–581. This was a method of business pursued with all of its customers.

It is said that the Candee Company was merged in the United States Rubber Company in April, 1895. The proof is that the Candee Company on that date ceased selling to the trade and confined its business thereafter to manufacturing. The present indebtedness to it represents the balance unpaid upon the advance of $50,000 made in January, and this indebtedness is entirely independent of that to the United States Rubber Company.

It was said that during the period of operation between January and August the Fargo Company was constantly staving off its indebtedness to its general creditors, while at the same time it was reducing its indebtedness to the Rubber Companies. There is no evidence in the record that any indebtedness was extended except in the single instance of the American Oak Leather Company.

Counsel undertake to charge the Rubber Companies with knowledge of the insolvency of the Fargo Company in January by showing the discrepancy between the liabilities in August and the amount realized from the assets in liquidation. This is manifestly unfair. All the evidence is, and the master finds, that in January the Rubber Companies believed the Fargo Company to be solvent and capable of being tided over to ultimate success.

It is claimed that the fact that after the January arrangement the Fargo Company continued to use its old letter-heads was evidence of fraud. These letter-heads showed that Frank M. Fargo was vice-president and treasurer,

whereas after January he was vice-president only, and that E. A. Fargo was secretary, whereas he had ceased to be such in January. There is no testimony that any creditor was deceived by these letter-heads and extended credit in reliance upon their statements. The only evidence on the subject of the letter-heads is that of Charles E. Fargo, president, who said that his company used whatever stationery it had on hand as a mere matter of utility and without any intention of deceiving anybody and without thinking one way or the other about it (Rec., 122).

In the brief of the counsel for the American Oak Leather Company there is also a quotation from Mr. Porter's testimony, appearing in three different places, on the pages 60, 69, and 133. This testimony, as quoted, is not in the record. What Mr. Porter actually said appears in Record, pages 446–7.

Question is made as to the correctness of the master's finding with reference to liabilities of the Fargo Company to other than the preferred creditors in August. He reported them as $142,690.95. These figures were taken from the books. There were some claims in August, growing out of advertising contracts, etc., which were not posted upon the books at the time of the failure and which, in the ordinary course of business, would not be posted until the bills were rendered, and this explains the discrepancy between the finding and the decree, which allows claims aggregating about $165,000. The discrepancy is not material, however, because taking the liabilities in August to the general creditors as $165,000, there is still shown a reduction of about $45,000 from the liabilities to the general creditors in January, which admittedly aggregated $210,216.20.

The partial copies of the letters quoted in counsel's briefs convey an erroneous impression. They should be read in their entirety, and, if this is done, they will demonstrate

that the desire and effort of all parties to the January arrangement was to tide over the Fargo Company to ultimate success, and not to commit a fraud upon creditors.

It is claimed that the Rubber Companies improperly participated in some way in the $10,000 transaction in August between the Fargo Company and the Metropolitan Bank. There is no evidence in the record that the Rubber Companies or their attorney had any knowledge at that time of the purpose to use the $10,000 as it was used. On August first Charles E. Fargo told Mr. Sadler, the representative of the Rubber Companies, that the Fargo Company wished to borrow $10,000 more from the bank to be used in continuing its business, and in order to get it wanted to give the bank judgment notes for the bank's entire claim as thus increased. At that time Sadler had no intimation that the company was about to fail (Rec., 535), and he agreed that this might be done. This was a mere partial release on the part of the Rubber Companies of the contract of the Fargo Company not to give judgment notes to others. Afterwards, and before the additional $10,000 was actually obtained from the bank, the Fargo Company had determined to suspend. Mr. Porter, then acting attorney for the Rubber Companies, knew that the money was obtained in contemplation of failure, but there is no evidence that he knew how it was to be used. If any presumption is to be indulged, it is that it was to be used in the discharge of corporate debts, and that Mr. Porter so supposed.

There is nothing in all this that could affect the validity of the preferences of the Rubber Companies, even if the $10,000 transaction should be held to vitiate the preference of the bank.

As to the prorating agreement between the bank and the Rubber Companies, this was made *after* the preference to the bank had been given, and the sole purpose of it, as explained by the testimony of Mr. Porter (Rec., 453), was to situate the

parties precisely, as if one officer had obtained all executions, at the same time, and levied them concurrently. This was necessary because the judgments were to be entered in courts of different jurisdiction.

Respectfully submitted.

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GEO. A. FOLLANSBEE,
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No. 436

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Supreme Court of the United States.

Brief of Newman for Resp'ts

OCTOBER TERM, 1899.

No. 436

Filed Nov 20, 1899.

Petition for Certiorari.

UNITED STATES RUBBER COMPANY, A CORPORATION, L. CANDEE & CO., A CORPORATION, AND METROPOLITAN NATIONAL BANK OF CHICAGO, A CORPORATION,

Petitioners,

vs.

AMERICAN OAK LEATHER COMPANY, PFISTER & VOGEL LEATHER COMPANY, THOMAS E. WILDER AND JOHN WILDER, CO-PARTNERS AS WILDER & COMPANY, EAGLE TANNING WORKS, UNITED STATES LEATHER COMPANY, LAMBEAU LEATHER COMPANY, THE BARBER BROS. COMPANY, BOSTON BLACKING CO., BULLETIN & GOOD ROADS, CARSON-PIRIE MONTHLY CO., CARVER COTTON GIN CO., CALVERT LITHOGRAPHING & ENGRAVING CO., B. E. COLE & CO., COLBURN, FULLER & CO., CONSUMERS' BOX MANUFACTURING CO., THE CONTINENT SHOE COMPANY, CROOKS, ROOT & CO., CYCLING GAZETTE, EASTON BOOT & SHOE COMPANY, ESTABROOK-ANDERSON SHOE CO., FARNSWORTH, HOYT & CO., I. P. FARNUM, C. C. FARWELL & CO., P. A. FIELD & CO., FLETCHER MF'G. CO., A. F. GALLUM & SONS, H. M. GEORGE & CO., GOLDSMITH, ROSENBUSH & LEVIE, GOODYEAR RUBBER CO., THE R. J. GUNNING CO., M. L. HILLER & SONS, A. J. MARCUS & CO., J. & H. MAYER, H. MICHAELS & CO., MILWAUKEE TACK CO., W. J. McBRIDE, PLIABLE SHOE CO., ROUSE, MANIERE, WILLIAMS & CO., SHATTUCK & BINGER, A. W. SHAW & CO., T. J. SHAY & CO., THE SINGER MANUFACTURING COMPANY, W. W. SPAULDING SPINNEY, VIRTUE & CO., STOWE, BILLS & HAWLEY, THILMANY PULP & PAPER MILLS, TUBULAR RIVET & STUD COMPANY, UNIVERSITY OF CHICACO WEEKLY, GEORGE H. VAN PELT, WACHUSETT MILLS, WEIR BROS. PAPER CO., CONSOLIDATED HAND METHOD LASTING MACHINE CO., HILLIARD & MERRILL, TRIPP GIANT LEVELLER CO., DRY GOODS REPORTER CO., E. H. VAN INGEN & CO., et al.,

Respondents.

BRIEF AND ANSWER OF THE ABOVE NAMED RESPONDENTS TO PETITION FOR CERTIORARI.

JACOB NEWMAN,
FRED'K A. SMITH,
HORACE K. TENNEY,
WM. J. MANNING,
Counsel for Respondents.

Geo. Hornstein & Co., Printers, Chicago.

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JACOB NEWMAN,
FRED'K A. SMITH,
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WM. J. MANNING,
Counsel for Respondents.

Brief and Answer of Respondents to the Petition for a Writ of Certiorari.

May it please the Court:

This is an application, in a case involving *merely private interests, for the issuance of a writ of certiorari to review a finding of the Circuit Court of Appeals as to the existence of fraud in fact*—a finding which *ex vi termini* and under the authorities is a bald finding of fact.

Smith v. *Craft*, 123 U. S., 440.

The existence of fraud in fact necessarily involves and implies the existence of fraud in law. In other words, the petitioners having been found guilty of fraud in fact, it is submitted with confidence that the question whether or not their preferences were legally fraudulent does not, for the purposes of this application, attain even the dignity of an academic question and is wholly immaterial.

Neither in their petition, nor in their brief, have the petitioners made a full and accurate statement of the facts disclosed by the record, or given the gist of the opinion of the Court of Appeals. However, the record of that court is expressly made a part of the petition and necessarily controls the meager and somewhat elusive allegations of the petition as to the questions of fact and propositions of law involved. We shall, therefore, not encumber this answer with a de-

tailed statement of facts, but respectfully refer the court to the opinion of the Court of Appeals, which we have inserted for convenience of reference in an Appendix to this brief, *infra*.

An examination of this opinion will demonstrate how unfounded is the claim of counsel that the Court of Appeals did not overrule the Master's findings on the subject of *fraud in fact*, and how baseless is their other claim that the learned Judge who wrote the majority opinion ignored the distinctions between fraud in law and fraud in fact.

We deem it advisable, however, to call attention here to a few specific items in which we think the petition, standing alone, is calculated (no doubt unintentionally) to create an erroneous impression.

1. The errors assigned by the respondents on their cross appeal were numerous, and (among other things) elaborately attacked the Master's report and the decree of the Circuit Court for failure to find *fraud in fact* on the part of the petitioners. (Rec., 684 to 692.)

2. We are satisfied that the statements of the petition as to the point actually decided by the Court of Appeals, and the basis of that decision, are incorrectly stated in paragraphs 8, 9 and 10 of the petition. These inaccuracies are discussed in the body of this brief.

3. We think also that the ground of Mr. Justice Brown's dissent is incorrectly stated in paragraph 8 of the petition. His dissenting opinion, as we read it, amounts to a declaration that the learned Justice did not find, as a matter of fact, that the petitioners were guilty of *fraud in fact*. This appears not only from his express statement, that he was not satisfied

from the *testimony* that "an actual fraud upon the "general creditors was intended," but also from the fact that he relies, as the basis for his conclusion that petitioners should *not* be postponed, upon *White* v. *Cotzhausen* (129 U. S., 329), and *Streeter* v. *Jefferson County Bank* (147 U. S., 36), cases where the preferred creditors were allowed to share because they were held to be *innocent of fraud in fact and guilty only of legal fraud.*

I.

This is an application for the issuance of a writ of certiorari, to review a decision of the Court of Appeals on a question of fact.

Counsel claim that there are two questions in this case:

First Question: Whether the petitioners' preferences were constructively fraudulent. (Petn. p. 5, par. 9.)

Second Question: Whether "the conduct of the "petitioners * * * was such as to justify the "court, when distributing the insolvent estate, in "postponing their claims to those of the other cred- "itors." (Petitioners' Brief, p. 1.)

The court will note that in none of the opinions filed in this case has any judge defined this "second question" in the language used by petitioners. On the contrary, the judges who decided that the petitioners should be postponed, bottomed their decision on a *concrete matter of fact*, and declared in clear, strong and direct language that the petiti-

oners were guilty of *fraud in fact*, and should therefore be postponed in the distribution of the estate.

In concluding, the Court of Appeals, through Judge Woods, summed up the case as follows:

> "It is clear that the Rubber Companies were "guilty of *fraud in fact*, and as against subse- "quent creditors of the Fargo Company, should "not be allowed to share in the fund for distri- "bution, and for the reasons stated the Bank "should likewise be postponed." (Appendix, *infra*, p. 29.)

Not only is the existence of actual fraud thus flatly found as the final conclusion drawn from an elaborate review of the evidence, but the opinion itself is substantially made up of a series of findings of actual fraud.

Mr. Justice Brown, on the other hand, bases his dissent on the non-existence of *fraud in fact*, saying, in his dissenting opinion,

> "I find no *testimony to satisfy me that an* "*actual fraud* upon the general creditors was in- "tended." (Rec., 736.)

He therefore concludes that the petitioners should neither enjoy their fraudulent preferences, nor be postponed, but should share *pro rata* with the other creditors.

The "second question" in the case—the only question upon which there has been any division of opinion—has thus been defined by the judges themselves as a question of fact to be determined from "the testimony" in the record. In a leading case this Court said:

"The question of fraud or no fraud involved a ques-

"tion of fact which, if this case had been on the com-"mon law side of the court and either party had de-"sired it, *must have been submitted to a jury.*"

Smith v. *Craft*, 123 U. S., 441.

That the judgment of the Court of Appeals is sound, if its conclusion as to the existence of actual fraud be right, can not be open to controversy. If the petitioners were guilty of fraud in fact in obtaining their preferences, there can be no doubt that they should be postponed in the distribution of the estate. All the cases agree that a creditor guilty of actual fraud in obtaining a preference will not be permitted to share in the estate until the innocent creditor is paid in full; this is the rule even where the guilty creditor's fraud did not create the innocent creditor's demand.

But the case at bar is much stronger. Here all the innocent creditors were *drawn in* to give credit, during the period the secret and fraudulent scheme was in full operation, and were so *drawn in* through the deception perpetrated by means of such secret and fraudulent scheme. Substantially every dollar due these creditors (Master's report, petitioner's brief, page 8) was created during this period, as the direct result of the deceitful scheme devised by the petitioners and fully described in the opinion of the Court of Appeals. It is this scheme, and the acts and motives of the petitioners in its creation and execution, which the Court of Appeals condemned and found fraudulent in fact. The authorities are uniform to the effect that under such a state of facts, the *drawn-in* creditors must be paid in full before the

guilty parties receive a dollar to apply on their demands.

Gill v. *Griffith*, 2 Md. Ch., 281.
Bacon v. *Harris*, 62 Fed. Rep., 105.
Simon v. *Openheimer*, 20 Fed. Rep., 556.
Ramsey v. *Town*, 20 Fed. Rep., 558.
Argall v. *Seymour*, 4 McCrary, 58.
Goll & Frank Co. v. *Miller*, 87 Ia., 426.
Falker v. *Linehan*, 88 Ia., 641.
Liddle v. *Allen*, 90 Ia., 741.
Root v. *Hurl*, 62 Mich., 423.
Blennerhasset v. *Sherman*, 105 U. S. 118.
Hilliard v. *Cagle*, 46 Miss., 309.
Lehman v. *Van Winkle*, 92 Ala., 443.
Stock Growers' Bank v. *Newton*, 13 Colo., 255.
Walton v. *First Nat'l. Bank*, 13 Colo., 265.

Counsel, if we understand their brief, do not seriously controvert these legal propositions. What counsel really complain of is the *verdict* "guilty of fraud "in fact" rendered by the Court of Appeals. At times they attack that verdict as unsustained by the evidence, etc.; at other times they ignore the *verdict* altogether, and cite and review authorities dealing with questions of constructive fraud, and attempt to apply these authorities to their own view of the facts and argue therefrom that petitioners were not guilty of even constructive fraud. But that the decree of the Circuit Court of Appeals was right if its verdict on the question of *fraud in fact* was right, counsel do not attempt to deny.

The two questions, which petitioners assert constitute the basis for this application, should therefore be stated as follows:

First Question: Whether the preferences obtained by the petitioners were constructively fraudulent.

Second Question: Whether or not the petitioners were guilty of *fraud in fact*.

But, in view of the character of this "second question" the existence of the first is a matter of minor importance and immaterial to this application; the greater includes the less. The existence of fraud in fact—when adjudged—necessarily carries with it the existence of fraud in law. Any transaction which is fraudulent in fact is necessarily fraudulent in law. If the petitioners were guilty of actual fraud, then they were necessarily guilty of the lesser wrong-doing of constructive fraud.

It is clear then that the main controlling question on this application for a writ of *certiorari* is a question of fact—*the existence of fraud in fact*. This question has been decided against petitioners by the verdict "guilty" rendered by the Court of Appeals. Unless and until that question of fact can be retried, the question of fraud in law is not before this Court, and there is no controversy as to the propriety of postponing petitioners in the distribution of the fund in the hands of the receiver. This application, therefore, amounts to a request that this Court shall issue its writ of *certiorari* to retry this question of fact.

II.

The Rules Announced by this Court Governing the Issuance of Writs of Certiorari.

The important and decisive inquiry, on this application, is not as to the correctness of the lower court's decision, but as to whether or not the case at bar involves such questions as bring it within that class of cases which this Court has declared may be brought up and heard on *certiorari*. While the power of the Court to issue the writ may not be denied, the exercise of that power in a given case is a matter in which the parties in that case have a substantial interest; and we conceive it to be as much a matter of right for the respondents to have the application decided by the rules which the Court has heretofore laid down for its own guidance, as it is for the petitioners to make the application.

1. It will be well, at this point, to refer to the principles which this Court has laid down as its guide in the exercise of the power to grant the writ of *certiorari*. For while these principles and decisions are necessarily familiar to the Court, the form in which they have been stated serves to show how widely divergent is the case at bar, from any case in which this Court has declared that the writ should issue. In the leading cases on this subject, these rules have been defined as follows:

(1.) The power to issue writs of *certiorari* "*is a power which will be sparingly exercised.*"

(2.) This power will be exercised only when:

(*a*) "*The circumstances of the case satisfy us that the importance of the question involved;*" or

(b) "*The necessity of avoiding conflict between "two or more courts of appeal;*" or

(c) "*Between courts of appeal and the courts of "the State;*" or

(d) "*Some matter affecting the interests of this "Nation in its internal or external relations.*"

"*Demand such exercise.*"

Forsyth v. *Hammond*, 166 U. S., 514, citing *Lau Ow Bew, petitioner*, 141 U. S., 587.

In re Woods, 143 U. S., 202.

Lau Ow Bew v. *U. S.*, 144 U. S., 47.

Amer. Constr. Co. v. *Jacksonville Ry. Co.*, 148 U. S., 372.

Accordingly this Court has granted a writ of *certiorari* where the Court of Appeals for the Seventh Circuit, and the Supreme Court of the State of Indiana had reached opposite conclusions as to whether, or not a tract of land was included within the municipal limits of the City of Hammond, Indiana, where "all the unfortunate possibilities of conflict "and collision which might arise from these adverse "decisions, were suggested;" when the application for *certiorari* was made.

Forsyth v. *Hammond*, 166 U. S., 515.

Lau Ow Bew, Petitioner, 141 U. S., 582.

Lau Ow Bew v. *U. S.*, 144 U. S., 47.

On the other hand, the writ has been refused, where it was sought to have this Court pass upon the law of the state of Minnesota as to *res adjudicata*, and Master and Servant, the court saying:

"But we do not regard the inquiry as to "whether it was settled law in the State of Min- "nesota that a judgment of dismissal in a former

"suit, such asas pleaded here, was not a bar to a "second suit upon the same cause of action, or "whether thhe law in respect of recovery by a "servant againainst his master for injuries received "in the courrse of his employment, was properly "applied on t the trial of this case, as falling with- "in the categgory of questions of *such gravity and* "*general imppportance* as to require the review of "the conclusisions of the Circuit Court of Appeals "in referencce to them."

In re Woods, 143 U. S., 205.

2. This Court has twice said in effect that the issuance of a writ of *certiorari* by this court, is governed by rules distinctly aanalogous to those determining the question as to whether or not a Circuit Court of Appeals should certifify a question to the Supreme Court for its instructiona.

For illustrationa, in *Lau Ow Bew's Case*, this Court, reviewing the circcumstances under which it was proper for the writ of *certiorari* to issue, said:

"It is evvident that it is solely questions of "*gravity* anand *importance*, that the Circuit Court "of Appeaisls should certify to us for instruction; "and that itit is only when such questions are in- "volved thaat the power of this court to require a "case in which the judgment and decree of the "Court of Appeals is made final, to be certified, "can be prroperly invoked. The inquiry upon "this applicication, therefore, is whether the mat- "ter is of sisufficient importance in itself, and suf- "ficiently open to controversy to make it the "duty of thhis court to issue the writ applied for "in order tthat the case may be reviewed and de- "termined a as if brought here on appeal, or writ "of error."

Lau Ow Bew, Petitioner, 141 U. S., 586.

So, likewise, in the *Hammond* case *(supra)*, the Court had the same questions before it, and quoted with approval, in the course of the argument, the language used in *Lau Ow Bew's Case*, and avowedly considered its action in passing upon the issuance of a writ of *certiorari* in the *Hammond* case, as properly regulated and governed by the analagous rules applicable to the certification, by the Circuit Court of Appeals, of questions to this Court for its instruction.

Inasmuch as this Court has repeatedly said that only questions of *gravity* and *importance* should be certified up by the Circuit Court of Appeals, and that the writ of *certiorari* should issue from this Court only to review questions of *gravity* and *importance*, it is clear that this Court intends to give the phrase, "questions of gravity and importance," the same meaning in both connections. In other words, that the *gravity* and *importance* which the question should possess in order to induce this Court to grant the writ of *certiorari* is the same kind of *gravity* and *importance* which would justify the Court of Appeals in certifying the same question up to this Court for instruction.

This Court has frequently said that for the reasons above stated, it will not under such a certificate, review, or pass upon even a question of mixed law and fact, nor permit the Circuit Court of Appeals to compel this Court to pass in any way, directly or indirectly, upon the *issues of fact* in the record, although the decision of such issues might be dependent on the determination of some question of law.

Cross v. *Evans*, 167 U. S., 60.

U. S. v. *Pacific Ry. Co.*, 168 U. S., 505.

McHenry v. *Alford*, 168 U. S., 651.
Smith v. *Craft*, 123 U. S., 436.
Jewell v. *Knight*, 123 U. S., 435.

It seems an inevitable deduction from the foregoing that this Court does not consider even questions of mixed law and fact, questions of such *gravity* and *importance* as to justify either the Circuit Court of Appeals in certifying such questions to this Court, or to demand the issuance by this Court of the writ of *certiorari* for their review. A *fortiori*, this Court will never issue the writ to review a mere question of fact. In other words, this Court will not bring up a case for review by *certiorari* unless the case hinges concisely on some clean-cut proposition or propositions of law, of *gravity* and *importance* within the meaning of those words as defined by the decisions we have cited.

III.

The Application of the Foregoing Rules to the Controlling Question in this Record.

As we have already shown *supra*, p. 7, the controlling question on this application is what counsel call their "second question." Unless this "second question" comes within the category of questions which this Court will review by *certiorari*, as announced in its decisions, then the petition must be denied. Recognizing this situation, petitioners are forced to make the claim that their "second "question" is "of such gravity, importance "and frequent recurrence as to justify the de- "cision thereof by a greater unanimity of judicial

"opinion than exists in the said Seventh Circuit, and "that to that end, said question ought to be decided "by this court by means of a *certiorari* herein to said "Circuit Court of Appeals." (Petition, p. 4, par. 10.)

But we have further shown (*supra*, p. 4), that petitioners' "second question" is merely whether or not the Court of Appeals rightly found, from the evidence in the record, that the petitioners were guilty of fraud in fact, and that the existence of fraud in fact is a question of fact. *Smith* v. *Craft*, 123 U. S., 440; *Jewell* v. *Knight*, 123 U. S., 435. The lack of "unanimity" complained of consists merely in the circumstance that the trial judge found the petitioners not guilty of *fraud in fact*, and the Court of Appeals, one judge dissenting, found the petitioners guilty of *fraud in fact*.

When petitioners' "second question" is thus stated in plain language, no foundation is left for petitioners' claim that this "second question" is a question of "such gravity and frequent recurrence "that its settlement by a greater concord of judicial "opinion seems desirable." (Petitioners' brief, p. 2.) It is not perceived how a question as to whether or not the evidence in a given case demonstrates the existence or non-existence of fraud in fact, can be said to be a question of "frequent recurrence," because it is submitted with confidence that no two cases of fraud in fact present the same circumstances.

We note further that this court has never said nor suggested, so far as we have been able to learn, that the fact that a question was of "frequent recurrence" constituted any ground whatever for a writ of *certiorari*.

Generally speaking, the simplest questions are the questions of most "frequent recurrence": and the fact that a question arises frequently creates a strong presumption either that it has been settled by repeated adjudications, or is governed by elementary principles.

1. A controverted question of fact, *where only private interests are involved*, can not be a question of "gravity and importance" within the meaning of that expression as used by this Court.

2. There can be no conflict between two or more Circuit Courts of Appeal, or between the Circuit Courts of Appeal and the courts of a state, on the question as to whether or not the conclusions of fact drawn from a given record in a particular case, are correct, and there is no claim that such a conflict exists as to this "second question."

3. Where only private interests are involved, a question of fact can not be a "matter affecting the interests of this nation in its internal or external "relations."

We doubt whether this Court will ever extend the writ of *certiorari* so far as to take jurisdiction of a case because the Court of Appeals (one member dissenting) has reversed the Circuit Court on a question of fact. If it does, then we respectfully submit a radical departure will be made by this Court on the subject of *certiorari;* and every case which involves the motives, conduct, and good faith of the parties, will knock at the door of this Court. On what ground, we respectfully ask, will this Court deny writs of *certiorari* in that vast mass of litigation which involves mere questions of fact? Where will the court stop to protect itself against

the very evil which the Act creating the Court of Appeals was designed to cure?

IV.

The Question of Legal or Constructive Fraud—Petitioners' First Question.

1. While we are satisfied that petitioners' "first question," namely, the question of legal fraud, is swallowed up by the question of fraud in fact, we shall nevertheless briefly consider their "first question" as though it had some bearing on this application. We do so simply because the bulk of petitioners' brief and argument is devoted to this subject.

At the outset it must be noted that the question of legal or constructive fraud, in a case involving a multitude of evidentiary facts, is itself a question of mixed law and fact.

Jewell v. *Knight*, 123 U. S., 426.
Smith v. *Craft*, 123 U. S., 436.

So that even if it could be said that the question of legal or constructive fraud was a material question in the case, the petitioners would not thereby be advanced, for this Court will issue writs of *certiorari* to review, neither questions of fact, nor questions of mixed law and fact.

(Authorities cited *supra*, p. 11.)
Smith v. *Craft*, 123 U. S., 436.
Jewell v. *Knight*, 123 U. S., 434.

2. Counsel define this "first question" in their petition as follows:

"That the Circuit Court of Appeals decided

"that certain preferences acquired by means of "judgment notes by two of said petitioners were "constructively fraudulent, because, immediately "after the giving of said notes and as a part of "of the agreement between C. H. Fargo & Co. "and said petitioners which resulted in the giv- "ing of such preferences, clerks in the office of "counsel for said petitioners became and contin- "ued until the entry of said judgments, the ma- "jority of the board of directors of said debtor "corporation, without notice thereof to the gen- "eral creditors of said company." (Petn., par. 9.)

The opinion of the Court of Appeals (Appendix, *infra*) shows that these allegations in the petition are palpably incorrect. First. The Court of Appeals decided that all the preferences of all the petitioners were *fraudulent in fact*. Second. In the face of thisrecord, it is nothing short of absurd for counsel to allege that the reason which they give in their petition as the basis of the decision of the Court of Appeals on this "first question" was the whole, or even a moiety of the reasons that moved that court. It is sufficient to say that counsel do not even mention the important element of intentional secrecy in creating and executing the scheme in question; an element which was considered of great moment by the Court of Appeals.

Counsel's "first question," therefore, might well be disposed of by the suggestion that the allegations of the petition in that regard are squarely contradicted by the record.

3. Assuming, for the purpose of discussion—which we deny as a matter of fact—that counsel's erroneous contention as to the fact, or reason upon which the

court based its decision is correct, we will proceed to consider the grounds urged by petitioners for the issuance of the writ to review this question of constructive fraud. These grounds, as stated in the petition, are two-fold:

(1.) "Said question is one of gravity and import-"ance."

(2.) "Such decision is inconsistent with decisions "in similar cases of this court and of the Supreme "Court of Illinois." (Petn., par. 9.)

There never has been any dissent on the part of any one of the five Judges who passed on this case from the proposition that these preferences were at least fraudulent in law, and that therefore petitioners were not entitled to claim any priority by virtue of such preferences. This was the decision of Judge Grosscup on the application for a receiver and injunction (*American Oak Leather Co.* v. *C. H. Fargo & Co., et al.*, 77 Fed. Rep., p. 671), and reaffirmed in his opinion on the final hearing. Judges Woods, Jenkins and Showalter, sitting in the Circuit Court of Appeals, in the appeal from the order granting the preliminary injunction (53 U. S. App., 444; 27 C. C. A., 118), while expressly reserving their opinion on the question of fraud in fact, held that the petitioners were clearly guilty of constructive fraud; and in his dissenting opinion on the last appeal, Mr. Justice Brown found no difficulty in arriving at the same conclusion.

The contest in this case is over the proceeds of the assets of the Fargo Company in the hands of a receiver appointed in an ordinary, every day creditor's bill, based on a return "*nulla bona*." The petition-

ers complain that their preferential rights to this fund have been held constructively fraudulent, and set aside wholly on that ground. Assuming petitioners' assertion in this respect to be true (although it is squarely contradicted by the record), it would not seem that a holding that such preferences were constructively fraudulent could be said to be a question of "*gravity and importance*" under the decisions. If the question of constructive fraud be one of "gravity and importance" under the facts of this case, then it is a question of like "gravity and importance" in all creditors' bills pending in the Circuit Courts where preferences are attacked on the ground that the acts of the parties were fraudulent or tended to "hinder, delay or defraud" creditors. A question is not one of "gravity and importance" for the purpose of an application for *certiorari*, simply because it deeply concerns the private interests of the parties. As we understand the decisions (*supra*, pp. 8, 9), the only cases which this Court deems it proper to review on the ground of "gravity and importance" are cases which (either on account of the public importance of the particular case, or the indirect importance to the public generally of a final settlement by this court of the legal questions involved), can be said to be questions of grave public interest and importance. It is submitted that counsel's "first question" does not present these characteristics.

4. We come then to the other reason given: that the decision of this question on which five Judges have agreed, is inconsistent with decisions in similar cases decided by this Court, and by the Supreme Court of Illinois. Having made this bold declaration, petitioners should at the outset point out at least one de-

cision in the Supreme Court of Illinois, or in this Court, with which the decision of the Court of Appeals is inconsistent, and should specify, in some definite manner, the concrete particulars out of which the inconsistency is claimed to arise. Instead of so doing, counsel indulge in an elaborate argument on the merits of the case generally, as illustrated by an argumentative review of a large number of cases in this Court and in the Supreme Court of Illinois and other states, which counsel claim are more or less analogous in some particulars to some of the elements in the case at bar.

Taking the petition as it stands, the allegation in this particular is, that the Court of Appeals held the preferences constructively fraudulent because the control of the board of directors was placed in the hands of the petitioners' attorneys, without notice to the general creditors, and that such holding is in conflict with the decisions of this Court and the Supreme Court of Illinois.

Now, a review of the many decisions of this Court and the Supreme Court of Illinois, which are cited in the brief of petitioners' counsel, *fails to disclose a solitary case in which such a proposition was either directly or indirectly presented, or discussed.*

Without taking time to call attention to the specific authorities cited by counsel, we think no clearer showing of our position can be made than that found in the opinion of the Court of Appeals in the case at bar. The court starts out by saying that the validity of the preferences in question must be determined by the law of Illinois, and that the laws of that state authorize preferences by insolvent corpora-

tions; the court then takes up the different cases in Illinois which were cited below by counsel and are again cited in their brief here, and shows how plainly they are distinguished, in essential features relating to the question of fraud, from the case at bar, and say:

> "The decisions cited afford no precedent, direct "or inferential, in justification of the scheme in "question, the like of which, we believe, if ever "conceived, was never before brought into effec- "tive operation. As a judicially sanctioned or "commercially accepted possibility, in business, "it is unbelievable." (Rec., 723-5.)

5. But, if we turn from this incomplete and incorrect statement by petitioners of the question decided by the Court of Appeals and look at the record itself, and the opinion of that court, we find abundant additional material showing that petitioners' claim of conflict or inconsistency on this question, is wholly untenable. The elements of fraud in this case were not, as claimed by petitioners, confined to the mere change in the board of directors; that was in reality but one of many evidentiary facts showing the fraudulent conduct of petitioners. The character of the scheme can only be determined by considering all its numerous elements; its necessary consequences and results, and the motives and intentions of the parties to the scheme, as disclosed by the testimony, which is so ably reviewed by the Court of Appeals.

In conclusion we beg to say that the line of argument pursued by counsel seems to us wholly foreign to the question to be determined by the Court

on this application. Instead of confining themselves to the question in hand, and demonstrating or attempting to demonstrate that the case at bar comes within the class of cases in which a writ of *certiorari* should issue, counsel have seen fit to file with their petition a substantial *replica* of their brief and argument in the Court of Appeals, and have argued at length *on the facts*, in an endeavor to convince this Court that petitioners were either not guilty of fraud in any form, or at all events, not guilty of the kind of fraud of which they stand convicted. We do not deem it necessary, or proper on this application for a writ of *certiorari* to reply in detail to this line of argumentation. A satisfactory discussion of the merits of that conviction would demand an elaborate review of the facts disclosed by testimony covering 430 printed pages; would demand, in short, that respondents likewise file, in resisting this application, a substantial copy of their brief and argument on the *facts* in the court below. This of itself seems to us a conclusive answer that this case does not come within the class of cases in which this Court will issue the writ of *certiorari*.

Respectfully submitted.

JACOB NEWMAN,
FREDK. A. SMITH,
HORACE K. TENNEY,
WM. J. MANNING,
Counsel for Respondents.

Appendix.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SEVENTH CIRCUIT, NOS. 598, 599—JUNE SESSION, 1899.

No. 598:

United States Rubber Company, a corporation, L. Candee & Co., a corporation, and Metropolitan National Bank of Chicago, a corporation,
Appellants,
vs.
American Oak Leather Company, *et al.* *Appellees.*

Appeal from the Circuit Court of the United States, for the Northern District of Illinois, Northern Division.

No. 599.

American Oak Leather Company *et al.*, *Appellants,*
vs.
United States Rubber Company, L. Candee & Co., The Metropolitan National Bank of Chicago and C. H. Fargo & Co.
Appellees.

Cross Appeal.

Before Brown, Circuit Justice, and Woods and Jenkins, Circuit Judges.

We have here an appeal and cross appeal. They are from a final decree, rendered in conformity with the Master's report of his conclusions on the evidence, and in accord with the theory of the interlocutory order affirmed by this court, in *United States Rubber Co.* v. *Am. Oak Leather Co.*, 53 U. S. App., 444, 27 C. C. A., 118. The defendants, the

Rubber Companies, and the Metropolitan National Bank, dispute that theory and insist that the preferences which they obtained were valid. The original complainants and other creditors who intervened, have brought the cross-appeal and insist that the fund in court should be applied to the discharge of their demands, and that in so far as the decree permits the defendants to share in the fund it is erroneous. The character of the case, as now presented, is not deemed to be essentially different from what it was before, but a fuller statement of the facts is desirable.

The corporation, C. H. Fargo & Co., successor to a partnership of the same name, was organized in 1889, to do a mercantile business in Chicago. In 1893 it became embarrassed, and being largely indebted to the Rubber Companies, the United States Rubber Company of New Jersey, and L. Candee & Co. of Connecticut, and to the Metropolitan National Bank of Chicago, and being compelled to yield to the demand of the latter for security, executed judgment notes to the bank for $130,000, and to the Rubber Companies for sums aggregating $200,000, those companies not asking but accepting security because the Bank exacted it. The Fargo Company had an agreed line of credit with the Bank to the amount of $50,000, which was sometimes exceeded. The judgment notes given in 1893 were paid in part from time to time, and before the close of 1895 were surrendered and ordinary promissory notes taken for the unpaid balances. On December 30 or 31, 1895, the corporation being again unable to meet its maturing obligations, sent telegraphic messages to the Rubber Companies, in response to which Charles L. Johnson and Huston M.

Sadler, Jr., as representatives of those companies, which some months before had become one in interest, went to Chicago, arriving January 2, 1896, and on the evening of that day commenced with Charles E. Fargo negotiations which on the 6th terminated in the agreement, the character of which is now the subject of the dispute. In those negotiations Johnson and Sadler were assisted and advised by the local counsel of the Rubber Companies, Mr. Wm. A. Beale, who was present at most of the interviews. At that time there was due from The Fargo Company to L. Candee & Co., as evidenced by notes given in settlement the preceding November, $44,900, to the United States Rubber Company, on open account for the proceeds of sales of consigned goods, $141,537.13, to the Metropolitan National Bank, $50,000, and to others $210,216.20—a total of $416,653.33. The value of the assets at that time was not definitely ascertained, but was represented by the Fargos to exceed largely the liabilities. In fact it was much less.

Johnson, on arrival, was told of the company's embarrassment, and was asked to have his companies make a loan of $25,000 to meet paper soon to mature. He refused the request and solicited security for what was owing to his companies, urging that on account of what they had done in 1893, they were entitled to preference over other creditors. That meant and was understood to mean an immediate suspension of business, and was refused by Charles Fargo, who insisted that a failure was not necessary, and that if they had to go to the wall they would treat all creditors alike. The negotiations then proceeded, but

without result, until January 6th, the whole effort for four days, so far as disclosed, being expended in the endeavor to devise a plan whereby the Rubber Companies could be made absolutely secure, and the Fargo Company be able to continue in business. The idea of putting the board of directors under control of the Rubber Companies having been suggested, and it having been determined that the loan had better be $50,000, Johnson, acting for the L. Candee & Co., then proposed to lend the Fargo Company $50,000 for six months upon the understanding that the loan and the previous indebtedness for $44,900 and the debt due and to become due to the United States Rubber Company "should be secured "in such way as might be satisfactory to their coun- "sel, Mr. Beale." This proposition was accepted on the same day, and as the Master's report proceeds to say, "it was agreed and arranged between the parties as follows:

First. That the $50,000 should be advanced to the Fargo Company by L. Candee & Co., partly on that date and during the succeeding two weeks.

Second. That the Fargo Company should that day execute and deliver its three judgment notes, one for $45,000 payable on demand to the order of L. Candee & Company, to secure that company with respect to its liability as endorser or guarantor upon the notes for $44,900 given previous to January, 1896, one for $51,500 payable on demand to L. Candee & Company as collateral security to plain notes of the Fargo Company which were given as evidence of the advance of $50,000 then to be made, and one for $140,000 payable on demand to the order of the United States Rub-

ber Company, as collateral security to the then existing and to any future indebtedness of the Fargo Company to the United States Rubber Company as aforesaid.

Third. That in case the Fargo Company should at any time find it necessary to suspend business, it would assign as additional security all its accounts and bills receivable; that it should not give any judgment notes to other creditors which would impair the security to the Rubber Companies, and that the $50,000 advance should be used by the Fargo Company in reduction of its general indebtedness as it matured; and

Fourth. That the four employes of the Fargo Company who were on the board of directors, and also E. A. Fargo, should retire from the board and there should be elected in their places by the stockholders of the company, five persons to be nominated by said Beale, in whom he had confidence, one of whom should become secretary and treasurer, and that the directors so to be elected at Beale's nomination should not hamper or interfere with the proper carrying on of the ordinary business of the company."

On the same day a meeting of the board of directors of the Fargo Company as then and theretofore constituted was held, at which was passed a resolution authorizing the borrowing of the $50,000 and the giving of judgment notes therefor and for existing indebtedness as stipulated, and accordingly three judgment notes "were executed and delivered by Charles "E. Fargo, president of the company, Frank M. "Fargo, vice-president and treasurer, and E. A. "Fargo, secretary, and the loan of $50,000 was per-

"fected, $10,000 being advanced at the time and the "balance of $50,000 during the succeeding two "weeks." This action was ratified on the 8th day of January, 1896, by the unanimous vote of the stockholders of the company, all the shares being represented. The three Fargos had been for some time the owners of all the shares. An effort was made to reduce to writing the understanding, but Charles Fargo insisted upon terms to which Mr. Beale would not assent, and Mr. Johnson, who was on his way eastward, being informed of the situation, sent from Altoona, Pa., on January 7th, a telegram to Mr. Beale, containing the following:

> "Sadler has explained the situation to me. "Think position should be made absolute, as soon "as possible, by completing arrangement as ar- "ranged and organization of directors to pre- "vent giving other judgment notes. * * * "Failure thus to protect us should result in exe- "cutions by us. Use, at your discretion, all "judgment notes in your possession, in order to "put our claim beyond peradventure."

This having been read to Mr. Fargo, he consented to trust Johnson in the matter without a written agreement.

At a meeting of the stockholders on January 9, 1896, George C. Madison, Tiffany Blake, Buell McKeever, Frederick B. Fuller, Gilbert E. Porter, Charles E. Fargo, and Frank M. Fargo were elected directors for the ensuing year, all except the Fargos and Blake being employes in the office of Beale, and Blake being assistant Corporation Counsel of the City of Chicago, of which Beale was then Corporation Counsel; and all except the Fargos were chosen at the

suggestion of Beale. At a meeting on the same day of the newly-elected board, Charles E. Fargo was re-elected president of the company, Frank M. Fargo vice-president, Basil McKeever was made secretary and treasurer, and the by-laws of the company were so amended as to forbid the giving of judgment notes or preferential security without special authorization from the board of directors. The change of the board of directors and officers, the change in the by-laws, and the resolution authorizing the execution of judgment notes and an assignment of accounts, the Master reported, "were all for the purpose of giving "preferential security to the Rubber Companies, and "the matter was kept secret in order to allow the "Fargo Company an opportunity of getting through "embarrassments apparently temporary, but not with "a fraudulent intent as to the other creditors of the "company." The report then proceeds:

> "The only purpose and object of changing the "board of directors as aforesaid and of amending "the by-laws was to protect the Rubber Compa-"nies against the giving by the Fargo Company "of preferential security or judgment notes to "other creditors, which should be superior (or "equal?) to the security of the Rubber Companies. "* * * The arrangement as made was car-"ried out in good faith by the parties, and the "directors elected at the suggestion of said Beale "took no part in the active management of the "Fargo Company after their election, and no "stockholders' or directors' meetings of the Fargo "Company were held after January 9th, 1896, "until August 5th, 1896."

It further appears that between January 6 and August 6, 1896, new liabilities were incurred by the

Fargo Company to creditors other than the Rubber Companies and the Bank to the amount of $246,660.54, of which there was due and unpaid on August 6, 1896, $142,690.95, and during the same period the Fargo Company paid to general creditors in the regular course of business more than $300,000, paying all of the indebtedness of January 6, 1896, which was largely to persons who are now creditors. Charles and Frank Fargo were personally liable upon portions of the debts of the company in January, and those portions were paid off before August. The original debt of $44,900 to the Candee Company was paid, and $13,470 on the loan of $50,000. To the United States Rubber Company as much as $15,000 was paid on old indebtedness, but additional consigned goods were sold to the amount of $24,534.04, of which the sum of $5,534.04 only was remitted, so that the sum due that company on August 6 was $142,424.81, and there was due to L. Candee & Co. $36,530. All credit given to the Fargo Company after January 9, except by the Rubber Companies and $10,000 by the Bank, was given in ignorance of the execution of the judgment notes to the Rubber Companies, of the change of directors and officers, and of the arrangement existing between the Rubber Companies and the Fargo Company. Of the liabilities so contracted the amount still unpaid exceeds $110,000. Besides the mere ignorance of the facts reported by the Master, the evidence shows that in order to obtain credit of the banks at Dixon it was represented in response to direct inquiry that the company had given no judgment notes, and to the representative of another creditor, the Pfister &

Vogel Leather Company, seeking payment or security, Charles E. Fargo, while denying that he had made a direct statement that the company had given no judgment notes, admitted that in response to inquiry he had made evasive answers likely to produce, and which he intended to produce, that belief. His testimony on the point presents an interesting picture of one who in all this transaction is credited with having had no wrongful purpose. About the last of July it became evident that a collapse was inevitable, and with that result in view, Charles Fargo, desiring money for the individual uses of himself and brothers, sought to obtain for the company from the Metropolitan Bank, to which there was then owing $40,000 unsecured, an additional $10,000. His plan was to have the Bank admitted into the arrangement with the Rubber Companies, and for the purpose of obtaining the consent of those companies he went to New York. He obtained the desired consent, but, according to the testimony of Mr. Sadler, without revealing the purpose to cease business. Mr. Sadler returned with him, or after a day or two followed him to Chicago, but for what purpose is not disclosed. Though not admitted, it is difficult to believe that he left Chicago without knowledge of what was being and about to be done.

In respect to the coming of the Bank into the arrangement with the Rubber Companies, the Master found, among other things, "that C. H. Fargo repre-
"sented to the president of the Bank that C. H.
"Fargo & Co. was indebted to him and his brothers for
"money exceeding $10,000, which they had borrowed
"upon their notes for the benefit of the company, and

"which they had paid over to the company for use in its "business, and that said Fargo Brothers had put up "some bank stock that they owned as collateral to said "notes; and C. E. Fargo thereupon proposed to said "Bank that if it would loan said C. H. Fargo & Co. "$10,000 in addition to its then existing loan, so that "said company could reimburse him and his brothers "and enable them to take up said notes, he would "procure from the said C. H. Fargo & Co. judgment "notes for said Bank, both for said sum so advanced "as aforesaid, and also for the notes then remaining "due said Bank to the amount of $40,000."

Without a further rehearsal of details, it is sufficient to state that the Bank was informed of the arrangement with the Rubber Companies, consented to join in it, advanced the additional $10,000, making its entire demand $50,000, received therefor two judgment notes for $25,000 each, accepted in immediate payment of one of them a conveyance by the Fargo Company of its manufacturing establishment and plant at Dixon, and contemporaneously entered into an agreement with the Rubber Companies that each would account to the other, and divide all sums realized *pro rata* according to the amounts of their respective claims. The Bank and the Rubber Companies proceeded at once to take judgments and to cause executions to be issued and levied. The accounts of the Fargo Company were assigned to the Rubber Companies as stipulated, and were placed in the hands of Mr. Beale's firm for collection—an arrangement which was continued by order of the Circuit Court, and the amounts realized therefrom and from the disposition of the property by the Marshal have been duly reported.

Exceptions were filed to the Master's report by the American Oak Leather Company, and by that company jointly with the other complainants, all of which the court overruled. Errors are assigned by the Rubber Companies jointly, and separately by the Metropolitan National Bank, and by the United States Rubber Company. The errors assigned on the cross-appeal are directed to the rulings upon exceptions to the Master's report as well as to the final decree.

Woods, Circuit Judge, after stating the case, delivered the opinion of the court:

Questions of fraud in law and fraud in fact are in their natures separate, though not always distinguishable by clearly defined lines. In this case they have been presented separately in the briefs, and in the argument at the bar of the court, but the facts bearing upon them are so commingled and to a large extent inseparable, that to avoid repetition no attempt will be made as we proceed to keep the distinction all the while in view.

There can be no doubt that the question of the validity of the preferences given to the Rubber Companies and to the Bank, should be determined by the law of Illinois where the attempt to give them was made. That law, it is also certain, authorizes judgment notes and permits the preferring of creditors by insolvent debtors, whether individual or corporate; and reference has been made to the decisions in *Field* v. *Ridgely*, 116 Ill., 424; *Hegeler* v. *First National Bank of Peru*, 129 Ill., 157, and *Haas* v. *Sternbach*, 156 Ill., 44, for adjudications of the validity of preferences obtained by means of judgment notes which had been withheld from record "for four years" "for

more than a year" and "for five years" while the debtor continued in business, obtaining, as it was alleged, new credit which would have been refused if the existence of the judgment notes had been known. In *Hegeler* v. *The Bank*, mortgage security had been offered by the debtor, but refused by the creditor, "because it would injure the credit of the glass "company and prevent it from obtaining credit else- "where." The court in that case said:

> "The argument proceeds throughout upon the proposition that the bank took its notes and held them under circumstances that made its conduct operate as a fraud upon others. There is no pretense that there was any agreement to conceal its claim against the glass company; much less that any such agreement was made for the purpose of enabling the company to obtain credit from others. No evidence can be found in the record proving, or tending to prove, acts or declarations on the part of appellee calculated to induce appellant to give credit to the glass company. There is nothing in the bill and certainly nothing in the evidence, to show that at the time appellee took the notes, and refused to take mortgage security, it did not honestly believe that, notwithstanding the insolvency of the glass company, it would, if its credit could be maintained, successfully recover from its embarrassment, continue business and pay all its debts."

In *Haas* v. *Sternbach*, a mortgage on real estate, kept off the record at the request of the mortgagor with the view to an early sale of the property, was pronounced not fraudulent as against creditors of the firm of which the mortgagor was a member; but an important distinction of that case, as well as of the preceding one, from the present, was marked by the court when it said:

> "There was no agreement or promise to keep the mortgage secret, but simply that it would not then be recorded; and there is an entire absence of proof that Charles Sternbach or his firm did or said anything other than withholding the mortgage from record, which could have misled others as to its existence."

"Thus, in Illinois it is clearly established law" say counsel, "that the maintenance of secrecy respecting "a preference without fraudulent intent as to other "creditors,' does not make the preference fraudulent": and to reinforce the proposition they cite *Sanford Fork & Tool Co.* v. *Howe*, 157 U. S., 312; *Sutton Mfg. Co.* v. *Hutchinson*, 24 U. S. App., 145; 11 C. C. A., 320. Whatever may be thought of the legislative policy which permits the execution and long holding of unrecorded judgment notes, the decisions cited afford no precedent, direct or inferential, in justification of the scheme in question, the like of which, we believe, if ever conceived, never before was brought into effective operation. As a judicially sanctioned or commercially accepted possibility in business it is unbelievable. It could be attempted only by a corporate debtor; and its approval by the courts would afford a new and fruitful motive for the creation of corporations by the many who would be quick to avail themselves of so promising a method of pursuing hazardous enterprises at the risk of others.

"The maintenance of secrecy," to repeat the words chosen by counsel to express the scope of the decisions referred to, does not signify necessarily more than the fact of secrecy, begun and continued without previous agreement or purpose to maintain it; but secrecy kept for a specific purpose means much more. The Mas-

ter's finding on the point implies, and the evidence demonstrates, a mutual understanding between those concerned that secrecy was necessary, and an express agreement that it should be kept would not have made the understanding more clear, or its fulfillment more imperative. During the negotiations the suggestion of a chattel mortgage was advanced, but promptly rejected, because without the publicity of recording the security would be invalid against other creditors. The scheme adopted, which, if upheld, though not constituting a recognized form of lien, would be a better security than a chattel mortgage, was accepted not only because it made secrecy possible, but because it made exposure impossible, if those employed to execute it kept faith; and that every one of them understood or was made to understand, that once the scheme was on foot his chief responsibility would be to maintain a discreet silence, the proof is clear, and there has been no attempt or apparent disposition to deny. Returning to the language of the report: "The matter was kept secret in "order to allow"—that is to say for the purpose of allowing—"the Fargo Company an opportunity of get"ting through embarrassments apparently tempo"rary"; and that of course, and avowedly, they were to do, or try to do, by continuing the business under a plan, which without secrecy was known to be impossible, and by which the risks of the business were shifted wholly upon those who, not suspecting the situation, should give undeserved credit. Secrecy kept for a purpose is not accidental or unintended. It is premeditated; it is in essence the same as if agreed upon; and the color imparted by it to this transaction, when

all the circumstances are considered, is not removed by the added words of the finding, "but not with a "fraudulent intent as to the other creditors of the com- "pany." Read strictly, that part of the finding is not broad enough to include subsequent creditors, against whom the scheme was so plainly wrongful that Charles Fargo, who is credited with having suggested the making of a change in the directory of his company, after a while became unwilling to pursue it further by seeking renewals of the company's notes in bank. If, however, the Master intended, as it seems probable he did intend, to find that the parties to the scheme had no conscious purpose to harm either present or future creditors, the finding can not abrogate or restrict the application of that familiar rule, without which a coherent code of law or morals would be impossible, that men shall be deemed to intend the natural and probable consequences of their acts or conduct. What did these people intend "as to other creditors"? Plainly that they should remain or become creditors without security or the possibility of obtaining it and be at the mercy of themselves, who by a secret control of the corporation, were to be able at any hour to close its doors and appropriate all its property to the payment of their own demands. There is a pertinent passage in the testimony of Mr. Beale. After explaining that he had personally cautioned Charles Fargo against being too hopeful, being inclined to branch out, and possibly having too much time to go fishing, and telling him that "he was all right if they handled "their business as it ought to be handled," he added: "They had started with a big business and ought to "be able to carry it along even through these hard

"times, but I was particularly desirous that through "any strong temptation he should not put the Metro- "politan Bank in a position where it could claim to "have been deceived. I do not think that the idea "of other creditors, merchandise creditors, or their "position, entered the mind of either Mr. Johnson or "Mr. Sadler or myself during the entire transaction; "we were thinking of the Metropolitan Bank and were "anxious to see that that indebtedness should not in- "crease after we made the arrangement, and that sub- "ject—reference to the Metropolitan Bank—formed "the subject of some conversation between Mr. John- "son and myself, and I distinctly remember at one of "the interviews at the Auditorium Annex saying that "Fargo after that must not go to the Metropolitan Bank "to borrow additional money. We had in mind that he "would not need to increase the credits after getting "this $50,000 from the Rubber Companies." One creditor, at least, was important enough to be thought of and talked of, and to be the object of solicitous care that "through any strong temptation" Fargo should not put it in a position where "it could claim "to have been deceived." What stronger condemnation could there be of the scheme, or better proof that its essential character was apprehended (though unconsciously, according to the Master's finding) by those about to put it into operation? There were potent reasons for thinking of the Bank, and for desiring that it should not have ground for asserting deceit. Mercantile creditors were further away and individually of much less importance, it is easy to see, than the Metropolitan National Bank with which it was a part of the plan to keep up, though it seems not

to increase, the Fargo Company's line of credit; but all that only emphasizes the wrong done in forgetting others, equally entitled to consideration, if they were forgotten, and if they were purposely left out of consideration still greater was the wrong. The apprehended power of temptation proved too strong for one of the Fargos when he obtained credit of the Dixon banks by a direct denial that judgment notes had been executed, and for another of them when, by an evasive denial, he intentionally produced the same belief. Mr. Beale, concerned only with the legal aspects of the situation and pressed with other business, testified as he remembered, but is it possible to believe that neither Johnson nor Sadler, during the four days devoted to this one matter, thought and talked of the bearing of the transaction upon one creditor, the Bank, and did not think of its import either to those who should give credit in the future, or to present creditors whose demands were a factor in the situation and could not have been omitted from an intelligent estimate of what had been and must be done. Their testimony contains no assertion or admission of such forgetfulness.

The inventors of the scheme were bound to apprehend its probable consequences, and in fact nothing occurred after January 9, when it was put into operation, which was not then reasonably to have been foreseen. The large existing indebtedness, present embarrassment and the unsettled conditions of business were known; the plan then adopted to keep the business going was of course known; in all its features, it was known too that new credit was to be sought, and success was uncertain, to say the very

least, in a degree far beyond the ordinary contingencies of a new business starting well, or of an old business in an unembarrassed condition. That the Rubber Companies apprehended a break down is demonstrated, aside from other considerations, by the extraordinary and unheard of means which they employed to guard themselves against all foreseen contingencies, knowing that by the same means the consequences, however disastrous, would be turned upon others, who misled by the appearance of a well sustained and prosperous business should give credit to the Fargo Company. Two years before a like embarrassment of the company had been bridged over by an agreement with the Rubber Companies and the Bank; but judgment notes only were then required. The lapse of two years had not improved the situation. The debt to the Bank had been largely reduced and that to the Rubber Companies by a small amount, but in the aggregate the liabilities still exceeded $400,000. The assets were represented to be considerably in excess of that amount, but no examination or close inquiry was made into the truth of the representation, though it was of a character which, under the circumstances, ought to have challenged belief. To a large amount, not then definitely stated, perhaps, but in the report of April 1, 1896, to the Dun Agency, put at $366,000, they consisted of notes and book accounts; and yet, for the purpose of devising means to raise $25,000—a mere bagatelle, as a witness accepting the word from Mr. Beale called it—the representatives of the Rubber Companies were summoned on a day's notice to come from New York to Chicago, and after arrival devoted

four days to the achievement. If the notes and accounts were good, as represented, the aid of the Rubber Companies was not needed to raise $25,000, or twice that sum; or, if needed, why were not the notes and accounts turned over at once as collateral either for the $50,000 alone, or for that and the original indebtedness? They could have been put at once into the same process of collection which was employed six months later. That course could have been pursued without impairing the standing of the company. But the evident truth is, and Johnson and Sadler were not much deceived about it, that the statement of assets in that particular and in others like the plant at Dixon put down at $110,000, when in fact worth nothing over incumbrances, was greatly exaggerated, and they can hardly be credited with not understanding that the company was then practically insolvent, and, without the indulgence of its creditors, bound to close its doors. Even if the Bank and Rubber Companies had agreed to hold their demands in abeyance, the company would have been unable to meet its liabilities of $210,000 to other creditors. To say the least, and without going beyond the facts reported by the Master, the agents of the Rubber Companies knew that the Fargo Company owed commercial debts to the amount of $400,000; that while its assets were asserted to be largely in excess of that amount, they were not presently available and that the company could go on in business for the next month only by procuring a loan of $25,000, and that to be able to go on certainly for a longer time $50,000 would be necessary. It was hoped—let us say it was believed—by all concerned that with that sum, under the plan

agreed upon, the company "would be able to weather "the storm." It was a storm they knew, and no matter what they believed, without better reason than the word of their debtor discredited by facts within their own knowledge, they had no right, in an attempt to ride out the storm, to adopt a deceitful plan, which they hoped might succeed, but by which, if failure came, loss, supposed to be made impossible to themselves, would certainly befall others. They may well be credited with having believed that the assets were then sufficient and that in the prosecution of the business under the plan proposed they would remain sufficient for the payment in full of their own demands, including the added $50,000, but beyond that, if their scheme was lawful, they did not need to care, and evidently did not, during the negotiations, very much concern themselves.

It was not, as alleged in the bill, a part of the plan that increased purchases should be made for the purpose of improving the security of the Rubber Companies. On the contrary the opposite course was recommended by Mr. Johnson, and to some extent was pursued, resulting as stated in a reduction of indebtedness about equally in the aggregate to the Rubber Companies and to other creditors. There was no necessity, at least no known necessity, for a different course in the interest of the Rubber Companies, their security being supposed to be ample, and it being in their power, by means of immediate judgments and executions, to exclude all other creditors until their demands were satisfied. The notes and accounts, though not leviable by execution, they supposed could not escape

them, because they had a contract with the old board of directors for their transfer, which the new board, appointed to do their bidding, would see performed. This suggestion, it is true, goes a little beyond the finding of the Master that "the only purpose of chang-"ing the board" was to protect the Rubber Companies against the giving of preferential security or judgment notes to other creditors, but it is evident that other emergencies might have arisen that would have called for the active interference of the board, directly or indirectly for the protection of the Rubber Companies, and it is idle to say that the board was not constituted as it was for the purpose of meeting whatever emergency might arise in the interest of those companies. "Practically they sat on a safety-valve * * * "so far as protection to the Rubber Company was "concerned," answered a witness, accepting again the words of counsel, and the full significance of the figure is in the fact that the craft they were sailing, if allowed to blow up, unless the navigators should bungle their work, could not injure owners nor crew, nor certain passengers, but only those who should have come aboard in the innocent belief that the boat was one of ordinary type, and that they were exposing themselves to no risks from which the captain, crew and other passengers were exempt. And that craft, it will not be overlooked, was "a going concern," which by the mere appearance given it of stanchness and completeness of equipment, was calculated to allure the unsuspecting to a voyage beset with unwonted dangers.

It has been emphasized in the taking of testimony that the Fargos were to be left to conduct the business in

their own way, that the new board, or the new trustees, were not to interfere with them, and that McKeever, the new treasurer elect, was to be treasurer in name only. This, it is explained, was done so that if the former treasurer, who was still to be treasurer in effect, and on the letter-heads kept in use was still designated as treasurer, should join in the execution of judgment notes as in 1893 he had done, his authority could be denied by showing that he was not in fact treasurer. It was a fraud on the law to constitute a board of trustees and a treasurer of a corporation of men who, from the beginning, were pledged not to give attention to their duties or to participate in the management of the business of the corporation, further than to protect the rights of particular creditors, in whose interest alone they were given their places: and when, in addition to enjoined silence and secrecy on the subject, letters under the old form of letter-head, showing the old officers to be still in office, were sent out as they were to old customers and to new, it was an act of deception for which the Rubber Companies can not escape liability, since that it should be done was implied in the plan adopted. It was essential to the secrecy which it was understood must be preserved, and was within the stipulation that the Fargos should be allowed to keep the business going and to conduct it without interference. It is no answer to say that those who dealt with the company did not consider nor care who were the officers. A change in the names on the letter-heads could not be made because likely to excite inquiry, and inquiry implied exposure.

When it is important to know the motives of men, their conduct is to be considered rather that their asser-

tions, especially when they testify in support of large pecuniary interests, either their own or of others, put at hazard by their conduct.

In the negotiations of January, Charles Fargo, at the beginning was master of the situation. He was able to compel and did compel Johnson to accede to his terms, and it was only by reason of an untimely delivery of the judgment notes due on demand, before getting the written agreement which he desired, that he found himself in Johnson's power, and Johnson determined upon immediate action, willing as he had declared himself a day or two before to lose $25,000 or $50,000 rather than that the Fargo Company should fail. What Johnson wished and sought at the beginning was security for the $186,437.13 due his houses, and when denied that on terms which involved an immediate suspension of the Fargo Company, he began to negotiate on the basis proposed of a loan to enable the company to continue in business. Touching his own motives, Charles Fargo testified to a belief that suspension was not necessary, and would not be. He was either purposely ignorant of the situation or unreasonably hopeful. He had a special motive however for seeking to escape immediate surrender, in the fact that he and his brother Frank were indorsers upon the company's paper to other creditors than the Bank and Rubber Companies to the extent of $15,000, and if the business could be kept going a few months that paper could be taken up. It was taken up before the collapse in August. The Fargos, therefore, were acting probably under two motives—one to keep the business going, with whatever hope they had of ultimate success, and the other to keep it going long

enough to pay off the obligations of the company on which they were personally liable. The controlling purpose of Johnson was to get security, and in order to get it he yielded to the request of the Fargos for a loan, increasing by that sum the demands of his houses. That price he consented to pay in order to obtain security for the whole indebtedness, believing the security adequate under any contingencies likely to come about during the ensuing six months deemed necessary for the working out of the scheme. He was willing, perhaps in a degree hopeful, that the Fargos should succeed, and that other creditors should not suffer, but except for the interest of the Rubber Companies and the integrity of their security he was practically indifferent, and any attempt to put him in any other attitude in the transaction strikes us as unnatural, unbusinesslike and incredible.

In August, as in January, Charles Fargo was able to dictate terms to the others concerned in what was then to be done. This time he had nothing to lose but something to gain for himself and brothers and for the Metropolitan National Bank, of which he was a stockholder. In January, it appears, he opposed the suggestion of admitting the Bank into the arrangement with the Rubber Companies, and it is, perhaps, not crediting him with too much acumen to suppose that besides other considerations he saw the advantage of holding that card for the last play. As an original proposition it is not probable that the Bank would have joined in the scheme, but in the end it was at his mercy, because without yielding the $10,000 it must lose its unsecured $40,000, or bring a suit in court, by which, at best, only a small percentage could be

saved. The Rubber Companies could not oppose him without danger of losing the book accounts and bills receivable which had not yet been assigned, and without exposing their judgment notes to attack by the Bank supported by the Fargos, who, perhaps, were the more to be respected because "knowledge is power." But for the "pressure" which Fargo was able to bring upon them, what businesslike reason was there for the Rubber Companies consenting to share their security with the Bank, if they believed it unimpeachable? Whatever they thought in January, they knew then that the property within reach of the executions which they could obtain was insufficient, and with the accounts receivable added would hardly realize enough to satisfy their own demands. When the agreement was made with the bank, stipulating that each party should account to the other for a prorated share of all sums realized, it is evident that all expectation of full payment had been abandoned. It is recited in the agreement that the parties had "determined to unite their efforts to col-"lect their respective claims, * * * and share "*pro rata* in the results thereof," but nowhere is there a hint of a possible surplus to divide. The Fargos had carried away their $10,000, the reward for their share in what had been done, and there was no reason, apparent at the time, for inserting in the agreement even a formal expression of the residuary rights of the Fargo Company or its victimized creditors.

The assignment of the bills and accounts as finally made, treated as the consummation of the agreement to assign made in January, was tainted with the ille-

gality of that contract of which it was a part; and if it could be regarded as an independent act, freed of the tainted origin, it was illegal because part of a transaction by which the managers of an insolvent corporation, going out of business, secured a preference for themselves. If the Fargo Company was justly indebted to Charles and Frank Fargo for money which they had borrowed upon a pledge of their bank stock, and the $10,000 obtained of the Bank was for the purpose of enabling the corporation to repay them, it was, under the doctrine of *Sutton Mfg. Co.* v. *Hutchinson*, *supra*, an unlawful preference, and made illegal any other preference granted wholly or partly in consideration thereof. This proposition applies also to the preference given to the Bank. Besides being managing officers, the Fargos were parties to the original scheme for securing the Rubber Companies, and of course could not prefer themselves over others whom by the false pretenses of that scheme they had induced to give credit to the corporation.

It is contended in behalf of the Bank that it entered into the agreement with the Rubber Companies in ignorance of their arrangement with the Fargo Company, that there was no wrong in its conduct, that nobody was harmed thereby, and therefore, that whatever may be said of the position of those companies, the preference which the Bank received is not assailable merely because of its contract to join the Rubber Companies in efforts to collect their respective demands and to prorate the proceeds. The Master has reported that at the time of the completion of the arrangement, "neither the Bank nor its officers nor "attorneys had any knowledge of the change of di-

"rectors of the said C. H. Fargo & Co. or of its by-"laws." The president of the Bank testified concerning his knowledge on the subject. It does not appear that other officers of the Bank had anything to do with the matter, and the finding in respect to them is unobjectionable, but if there is evidence in the record we have not found it, that the attorney of the Bank who conducted the negotiations and is shown to have had a much more intimate knowledge of the details of the transaction than the president, did not know every feature of the original scheme. The president of the Bank himself testified that when he agreed to loan the $10,000 he knew it was necessary to get the authority of the directors for the execution of the judgment notes for the whole sum of $50,000; and that on his asking Porter when the judgment notes would be made, "he said it was easy to make "them—that the directors were all in that office" (Beale's), "or could be gotten." That certainly ought to have put him upon inquiry into the reasons for so extraordinary an organization of the directory, and in an earlier part of his testimony, after denying knowledge that the Fargo Company was officered by parties representing the Rubber Companies, and being asked when he first learned that persons were acting in behalf of the company other than those connected with its management, in the sale of goods, he answered: "It might have been the day following: "I think it was from something which was said in "Mr. Beale's office by Mr. Porter. My impression "is that he said that the directors of the company "were men who were employes in the office there, or "were part of the firm, of the law firm there." And

again on cross examination, he admitted that he did learn "of the extent of the indebtedness to the United "States Rubber Company and L. Candee & Company, "and also learned that they had some kind of an agree- "ment with the Fargo Company by which they were "authorized to secure their indebtedness in advance "of any other creditors of the company." This, it is certain from his own testimony, occurred before the judgment notes to the Bank were executed, and before the $10,000 was paid over. If the witness testified to his knowledge or ignorance of the change in the by-laws we have failed to find the passage; but it is not of much importance in view of what he did well understand. Besides, if the Bank were acquitted of all guilty knowledge and purpose in the transaction, how can it escape the entangling alliance into which it entered with the Rubber Companies? The agreement between them is still in force, and if the Bank is allowed to retain its preference it will be bound to pay over to the Rubber Companies of what it realizes in the proportion of $14 to every $5 received to its own use; and if the preference be set aside and the Bank permitted to share *pari passu* with other creditors, except the Rubber Companies, of the amount so received, great or small, it will be bound to account to the Rubber Companies in the same proportion. The validity of that agreement as between the parties is not in issue and can not be affected by the decree in this case. If unlawful and invalid as against other creditors because made in fraud of their rights, it is nevertheless binding between the parties, and could not be annulled at the suit of either against the consent of the other on account of anything done in this case. Courts of

equity do not interfere to relieve parties from the consequence, though unexpected, of illegal agreements. Moreover, the Bank if permitted to share in the fund to be distributed, the Rubber Companies being excluded, would receive more in proportion than if the preferences had been upheld, and the division were made between it and the Rubber Companies. It is clear that the Rubber Companies were guilty of fraud in fact, and as against subsequent creditors of the Fargo Company, should not be allowed to share in the fund for distribution, and for the reasons stated the Bank likewise should be postponed.

The fact that some of the creditors were creditors when the arrangement between the Fargo Company and the Rubber Companies was put into operation can not be allowed to change the result. It is impossible to say that they were not injuriously affected, even in respect to their prior demands, and it is certain that they would not have given further credit if there had been proper publicity about the things done which were purposely kept secret from them. The innocent creditors, whether prior or subsequent, are all entitled to share proportionately in the fund. The Rubber Companies and the Bank are not entitled to share as against the subsequent defrauded creditors, and therefore can not be permitted to share with the prior creditors, since thereby they would be sharing with those who were defrauded.

The principal appeal is denied; the cross-appeal is sustained, and the decree below is reversed in so far as it permitted the Rubber Companies and the Bank

to share *pari passu* with other creditors, and the cause is remanded with direction that the decree be so modified as to require the payment in full of all claims of other creditors, if the fund be sufficient, and that if anything remains it be paid proportionately to the Bank and to the Rubber Companies.

No. 436. 150

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1899.

No. 436.

United States Rubber Company, a Corporation, L. Candee & Co., a Corporation, and Metropolitan National Bank of Chicago, a Corporation,

vs.

American Oak Leather Company, Pfister & Vogel Leather Company, Thomas E. Wilder and John Wilder, Co-partners as Wilder & Company, Eagle Tanning Works, United States Leather Company, Lambeau Leather Company, The Barber Bros. Company, Boston Blacking Co., Bulletin & Good Roads, Carson-Pirie Monthly Co., Carver Cotton Gin Co., Calvert Lithographing & Engraving Co., B. E. Cole & Co., Colburn, Fuller & Co., Consumers' Box Manufacturing Co., The Continent Shoe Company, Crooks, Root & Co., Cycling Gazette, Easton Boot & Shoe Company, Estabrook-Anderson Shoe Company, Farnsworth, Hoyt & Co., I. P. Farnum, C. C. Farwell & Co., P. A. Field & Co., Fletcher Mfg. Co., A. F. Gallum & Sons, H. M. George & Co., Goldsmith, Rosenbush & Levie, Goodyear Rubber Company, The R. J. Gunning Co., M. L. Hiller & Sons, A. J. Marcus & Co., J. & H. Mayer, H. Michaels & Co., Milwaukee Tack Co., W. J. McBride, Pliable Shoe Co., Rousemaniere, Williams & Co., Shattuck & Binger, A. W. Shaw & Co., T. J. Shay & Co., The Singer Manufacturing Co., W. W. Spaulding, Spinney, Virtue & Co., Stowe, Bills & Hawley, Tallassay Pulp & Paper Mills, Tubular Rivet & Stud Company, University of Chicago Weekly, George H. Van Pelt, Warbasett Mills, Weir Bros. Paper Co., Consolidated Hand Method Lasting Machine Co., Hilliard & Merrill, Tripp Giant Leveller Co., Dry Goods Reporter Co. and E. H. Van Ingen & Co.

Certiorari to Circuit Court of Appeals for the Seventh Circuit.

PETITION OF RESPONDENTS.

JACOB NEWMAN,
FRED A. SMITH,
HORACE KENT TENNEY,
WM. J. MANNING,
G. W. NORTHRUP, Jr.,
Counsel for said Petitioners.

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PETITION OF RESPONDENTS.

JACOB NEWMAN,
FRED A. SMITH,
HORACE KENT TENNEY,
WM. J. MANNING,
G. W. NORTHRUP, JR.,
Counsel for said Petitioners.

To the Honorable, the Judges of the Supreme Court of the United States:

Your petitioners, American Oak Leather Company; Pfister & Vogel Leather Company; Thomas E. Wilder and John Wilder, co-partners as Wilder & Co.; Eagle Tanning Works; United States Leather Company; Lambeau Leather Company; The Barber Bros. Company; Boston Blacking Company; Bulletin & Good Roads; Carson-Pirie Monthly Company; Carver Cotton Gin Company; Calvert Lithographing & Engraving Company; B. E. Cole & Co.; Colburn, Fuller & Co.; Consumers' Box Manufacturing Company; The Continent Shoe Company; Crooks, Root & Co.; Cycling Gazette; Easton Boot & Shoe Company; Estabrook-Anderson Shoe Company; Farnsworth, Hoyt & Co.; I. P. Farnum; C. C. Farwell & Co.; P. A. Field & Co.; Fletcher Manufacturing Company; A. F. Gallum & Sons; H. M. George & Co.; Goldsmith, Rosenbush & Levie; Goodyear Rubber Company; The R. J. Gunning Company; M. L. Hiller & Sons; A. J. Marcus & Co.; J. & H. Mayer; H. Michaels & Co.; Milwaukee Tack Co.; W. J. McBride; Pliable Shoe Co.; Rousemaniere, Williams & Co.; Shattuck & Binger; A. W. Shaw & Co.; T. J. Shay & Co.; The Singer ManufacturingCo.; W. W. Spaulding; Spinney, Virtue & Co.; Stowe, Bills and Hawley; Tilmany Pulp and Paper Mills; Tubular Rivet & Stud Company; University of Chicago Weekly; George H. Van Pelt; Wachusett Mills; Weir Bros. Paper Co.; Consolidated Hand Method Lasting Machine Co.; Hilliard & Merrill; Tripp Giant Leveller Co.; Dry Goods Reporter Co.; and E. H. Van Ingen & Co.,

respectfully represent unto your Honors that on the 30th day of October, A. D. 1899, the United States Rubber Company, L. Candee & Co.; and Metropolitan National Bank of Chicago filed in the above entitled matter their certain petition, (making your petitioners respondents thereto), and praying for a writ of certiorari to the United States Court of Appeals for the Seventh Judicial Circuit, to bring up the record of the proceedings of a certain cause wherein said American Oak Leather Co. was complainant, and the said United States Rubber Company, L. Candee & Co., Metropolitan National Bank *et al.* were defendants, in the Circuit Court of the United States at Chicago, in which a decree had been entered in said United States Circuit Court, at Chicago, on May 4, A. D. 1899, from which decree an appeal had been prosecuted to said Circuit Court of Appeals by said United States Rubber Company, L. Candee & Co. and Metropolitan National Bank of Chicago, and a cross appeal had also been prosecuted to the same court by said American Oak Leather Company *et al.*, your petitioners herein, which said appeal and cross appeal were heard together by said Circuit Court of Appeals on one record, and on the hearing of which said appeal and cross appeal said Circuit Court of Appeals, on October 3, A. D. 1899, reversed the decree of said Circuit Court of the United States and remanded said cause to said Circuit Court; all of which will more fully appear from said petition of said United States Rubber Company, L. Candee & Co. and Metropolitan National Bank of Chicago remaining on file in the records of this cause in this court.

2. That with their said petition for *certiorari*, said United States Rubber Company *et al.* filed in this court a certified transcript of the record of said cause, which includes both said appeal and said cross-appeal, which transcript now remains on file in this court in this cause and is hereby made a part hereof.

3. That your petitioners here duly entered their appearance herein as respondents to said application, and thereafter this court, on December 11th, A. D. 1899, granted the prayer of said petition and directed said writ of *certiorari* to issue, and on December 14, A. D. 1899, said writ of *certiorari* was duly issued.

That thereafter, it was stipulated by and between your petitioners and said United States Rubber Company *et al.*, that said certified transcript of the record in said cause so already filed in this court by said United States Rubber Company *et al*, with their said petition for a writ of *certiorari*, should be taken as a return to said writ of *certiorari*, and in obedience to said writ of *certiorari*, and in pursuance of said stipulation, the Clerk of said Circuit Court of Appeals, on February 26, A. D. 1900, filed in this court his certain certificate, certifying that the said transcript of the record of said cause so filed by said United States Rubber Company *et al.*, in this court, with their said petition for *certiorari*, was a full, true and correct transcript of the record upon which said cause (viz. said appeal, wherein said United States Rubber Company *et al.* were appellants and said American Oak Leather Company *et al.* were appellees, and said cross appeal wherein the American Oak Leather Company *et al.* were appellants and said United States Rubber Company *et al.* were

appellees), was heard in said United States Circuit Court of Appeals, and thereafter, said record so filed and certified was duly printed by the Clerk of this court, in accordance with the rules of this court, and copies of said printed record were filed by said Clerk in accordance with the rules thereof, and still remain on file in this court in this cause, Number 436; all of which will appear from the records and proceedings herein in this court.

4. Your petitioners further show that said cause was a bill originally filed by said American Oak Leather Company, a citizen of Ohio, in the Circuit Court of the United States at Chicago, in chancery, against said United States Rubber Company, L. Candee & Co., Metropolitan National Bank of Chicago, C. H. Fargo & Co., a corporation, *et al.*, citizens of Illinois, Connecticut and New Jersey, in which it was averred in substance that said American Oak Leather Company had recovered a judgment at law against C. H. Fargo & Co., upon which execution had been issued and returned *nulla bona*, and also among other things, that certain judgments and warranty deeds and an assignment of book accounts were actually fraudulent, viz:

Two judgments by confession against C. H. Fargo & Co. entered August 6, 1896, in the United States Circuit Court at Chicago (one in favor of the United States Rubber Company for $145,400, and the other in favor of L. Candee & Co. for $38,300); also a judgment by confession in the state court at Chicago, entered August 6, 1896, against C. H. Fargo & Co., and in favor of the Metropolitan National Bank of Chicago, for $25,250.

An assignment of book accounts made August 6, 1896, by C. H. Fargo & Co. to said United States Rubber Company, and two warranty deeds from C. H. Fargo & Co. to said Metropolitan National Bank dated August 6, 1896, conveying to said bank said C. H. Fargo & Co.'s factory and plant at Dixon, Ill.

And also averring in substance (among other things) that all the tangible goods, chattels and effects of said C. H. Fargo & Co. had been levied upon and were held under executions issued upon said judgments in favor of the United States Rubber Company and L. Candee & Co. and that said United States Rubber Company was in possession of the book accounts of said C. H. Fargo & Co. and was collecting the accounts thereof, and that by reason of the acts and doings of said United States Rubber Company, L. Candee & Co. and Metropolitan National Bank of Chicago as set forth in said bill, they should not be allowed to share in the proceeds of said assets of C. H. Fargo & Co. until the claims of said American Oak Leather Company had been paid in full.

5. That thereafter said United States Court at Chicago appointed a receiver in said cause, and said tangible assets have been converted into money and a considerable amount of said accounts have been collected, and said receiver now has in his hands the sum of about $111,000 and upwards, to be disposed of and distributed in accordance with such decree as shall be finally made.

6. That after the filing of said bill other creditors of said C. H. Fargo & Co. who, with said American Oak Leather Company are the petitioners in this petition joined said American Oak Leather Company in

said suit. That the total claims of your petitioners in this petition aggregate over $200,000.

7. That thereafter said cause came on to be heard, and was heard and said Circuit Court of the United States at Chicago on May 4, A. D. 1899, entered a decree therein, holding and adjudging said confessed judgments, said assignment of book accounts and said warranty deeds to be constructively fraudulent, and set aside the same and each of them, and directed the moneys and assets in the hands of the receiver to be distributed *pro rata* in proportion to the amount of their respective claims among and between said American Oak Leather Company and said other creditors of said C. H. Fargo & Co., including said United States Rubber Company, L. Candee & Co. and Metropolitan National Bank of Chicago.

8. That thereafter said United States Rubber Company, L. Candee & Co., and Metropolitan National Bank prosecuted their certain appeal from said decree and proceedings of said Circuit Court of the United States to the Circuit Court of Appeals for the Seventh Judicial Circuit, assigning as error, in substance, that said Circuit Court of the United States had erred in holding said confessed judgments, said assignment of book accounts and said warranty deeds constructively fraudulent, and in not holding the same to be innocent and *bona fide*, and had erred in not directing said assets and moneys in the hands of the receiver to be first paid to said United States Rubber Company, L. Candee & Co., and Metropolitan National Bank of Chicago until their said judgments were paid in full, before any sums were paid to said American Oak Leather Company and the other cred-

itors of said C. H. Fargo & Co., which is the said appeal of said United States Rubber Company *et al.*, herein above mentioned.

9. That said American Oak Leather Company and said other creditors, (your petitioners in this petition) also prosecuted to said Circuit Court of Appeals for the Seventh Circuit, their said cross appeal from said decree of said United States Circuit Court, assigning as error (among other things) in substance that said Circuit Court of the United States had erred in not finding that said confessed judgments, said assignment of book accounts and said warranty deeds and each of them, were actually fraudulent, and had erred in not finding and decreeing that said United States Rubber Company, L. Candee & Co. and said Bank were guilty of actual fraud, and that by reason of the acts, doings and concealments of said United States Rubber Company, L. Candee & Co., and C. H. Fargo & Co. which had been adopted and ratified by said Metropolitan National Bank, said American Oak Leather Company and the other creditors who had joined in said creditor's bill, had been drawn in to give said C. H. Fargo & Co. credit between January 6, 1896, and August 6, 1896, which credit they would otherwise not have given, and that thereby the claims of said American Oak Leather Company and other creditors, filed in this cause, had been created, and that in justice and in equity, said claims should be first paid in full before said United States Rubber Company, L. Candee & Co. or said Metropolitan National Bank of Chicago were allowed to share in the assets of said C. H. Fargo & Co. in the hands of said receiver, and that by reason of said

facts, among other things, said Circuit Court had erred in permitting said United States Rubber Company, L. Candee & Co. and the Metropolitan National Bank to share in said moneys and assets in the hands of said receiver, before said American Oak Leather Company and the other creditors had been paid in full.

10. That thereafter said two appeals were heard together on the same record before said Circuit Court of Appeals, composed of their Honors, Mr. Justice Brown, Judge Woods and Judge Jenkins, and said Court, on the third day of October, 1899, denied the appeal of said United States Rubber Company *et al.* and overruled the errors by them assigned, and sustained said cross appeal of said American Oak Leather Company *et al.*, and the errors by them assigned, and entered one order and decree in the matter of said appeal and said cross-appeal, as so consolidated, whereby it reversed the decree of said Circuit Court of the United States, with costs, in so far as it permitted said United States Rubber Company, L. Candee & Co. and Metropolitan National Bank to share *pari passu*, with the other creditors in the said funds to be distributed, and remanded said cause to said Circuit Court with directions that said decree be so modified as to require the claims of the American Oak Leather Company and the other creditors, your petitioners here, to be first paid in full if the funds should be sufficient to that end. That on the decision of said cause in the Circuit Court of Appeals the majority opinion of said court was filed by Judge Woods, with whom concurred Judge Jenkins, and your petitioners are advised by counsel that in

said majority opinion it was held in effect that said United States Rubber Company, L. Candee & Co. and the Metropolitan National Bank were guilty of actual fraud, and therefore should be postponed. Your petitioners further show that Mr. Justice Brown filed a dissenting opinion in said cause on said hearing, in which he announced in effect that in his opinion said United States Rubber Company, L. Candee & Co., and the Metropolitan National Bank were guilty of constructive fraud, and for that reason the judgments and assignment of book of accounts obtained by them should have been set aside; but he further announced that in his opinion they were not guilty of actual fraud, and therefore should not be barred from sharing in the proceeds of the assets of C. H. Fargo & Co. *pari passu* with the other creditors.

Your petitioners further respectfully show that the questions raised by the errors assigned by your petitioners on their said cross appeal were the only questions on which there was any difference of opinion between Mr. Justice Brown and Judges Woods and Jenkins on the hearing of said appeal and cross appeal in the Circuit Court of Appeals, and owing to this fact, and on account of the large monetary interest to your petitioners involved in said questions, it is a matter of importance that on the hearing of this *certiorari* proceeding this court should be in position fully to consider, pass upon and determine said questions, and to adjudicate the same as fully as said Circuit Court of Appeals was enabled to adjudicate the same.

12. Your petitioners further represent that they are advised by counsel that this court has not promulgated any rules specifically regulating the practice in

like cases, and that their said counsel have been unable to find any decision or adjudication of this court fixing the practice of this court in like cases. That in the case of *Hubbard* v. *Tod*, 171 U. S., 494, an appeal had been prosecuted by an intervenor from a decree of the Circuit Court of the United States to the Circuit Court of Appeals, and in the same case a cross-appeal has been prosecuted from the same decree to said Circuit Court of Appeals by the defendants to said cause; that on the hearing in the Circuit Court of Appeals in the *Hubbard* case the decree of the Circuit Court of the United States had been affirmed, and the intervenor in said cause applied for a writ of *certiorari* from this court, which was granted, but the defendants (respondents) in said cause notwithstanding the fact that they had prosecuted a cross-appeal to said Circut Court of Appeals which had been affirmed, did not apply to this court for a writ of *certiorari*, and this court, in its opinion in said cause, said, by Mr. Chief Justice FULLER:

"It is provided by the Judiciary Act of March 3, "1891, c. 517, Par. 6.26, Stat. 826, 828, that any case "in which the judgments or decrees of the Cir- "cuit Court of Appeals are thereby made final, may "be required, by *certiorari* or otherwise, to be cer- "tified to this court, 'for its review and determina- "tion, with the same power and authority in the case "as if it had been carried by appeal or writ of error "to the Supreme Court.'

"This case belongs to the class of cases in which "the decree of the Circuit Court of Appeals is made "final by the statute, and having been brought up by "*certiorari* on the application of petitioner below, is "pending before us as if on his appeal.

"And as respondents did not apply for *certiorari*, "we shall confine our consideration of the case to the "examination of errors assigned by petitioner."

13. Your petitioners further show that inasmuch as said Circuit Court of Appeals sustained the contentions and assignment of errors of your petitioners, your petitioners are in no way dissatisfied with the decision of said Circuit Court of Appeals, but on the contrary thereof, are perfectly satisfied therewith, and have, therefore, no reason to pray for the issuance of a writ of *certiorari* from this court on account of any dissatisfaction of your petitioners with the decree of the Circuit Court of Appeals. That in the *Hubbard* case the respondents (defendants) who did not file a petition for *certiorari*, and whose errors this court for that reason refused to entertain, were defeated in the Circuit Court of Appeals, whereas your petitioners were successful in said court.

14. Your petitioners are nevertheless advised by counsel that in view of said decision and language in the *Hubbard* case, it may be a question of some uncertainty, as to whether or not on the hearing of this *certiorari* proceeding this Honorable Court will consider or pass upon the errors assigned by your petitioner in the matter of their said cross appeal, unless your petitioners apply to this court for some order in this matter, permitting or directing that on the hearing of this cause the errors of your petitioners shall be considered, and your petitioners secure the benefit and advantage thereof, and that the case stand in this court in the same situation as in the Court of Appeals and with the same power, in this court as in that. Your petitioners are also advised by counsel that it may be a question of some uncertainty whether this court may not consider the *certiorari* proceedings

herein as constituting in effect an appeal from the original decree of the trial court, by the parties petitioning for said writ of *certiorari* only (viz., said United States Rubber Company, L. Candee & Co. and the Metropolitan National Bank); *i. e.*, whether this court may not treat said cause on said hearing as though only said United States Rubber Company *et al.* had appealed to this court from said decision of said trial court (the Circuit Court of the United States), and as though your petitioners American Oak Leather Company *et al.* had not appealed therefrom.

15. Your petitioners further show that in order to remove all doubt and uncertainty on these questions, your petitioners heretofore requested counsel for said United States Rubber Company *et al.* to stipulate with your petitioners that on the hearing of these *certiorari* proceedings the errors assigned by your petitioners in the Circuit Court of Appeals should be heard, considered and determined by this court on said record, as well as the errors assigned by said United States Rubber Company *et al.*; but your petitioners show that said counsel for said United States Rubber Company *et al.* declined to enter into such stipulation, or any stipulation to that effect.

16. Your petitioners further humbly show as hereinabove set forth that the complete record of said cause, on which both said appeal and cross appeal were heard together, has been filed in this court in this *certiorari* proceeding, and is now actually on file in this court, and that this court has therefore full jurisdiction to enter all orders that may be necessary or convenient, in order to do complete justice in said cause.

17. Your petitioners therefore humbly pray that if this court is of opinion that upon the record in this cause as it stands it can and will consider the assignments of error which these petitioners assigned as hereinabove set forth in the matter of their said cross appeal in the United States Circuit Court of Appeals, and the questions presented by those assignments of error and that no affirmative action is necessary upon the part of these petitioners to entitle the court to consider and pass upon those questions, that in such case this court will so formally announce its decision in order that the question and the practice in this regard may be settled in advance, so that all parties to this case will know what the decision of the court is in that regard before the final hearing and before it is too late for petitioners to comply with whatever might be the decision of the court hereafter upon this question.

18. And your petitioners further humbly pray that (if this court shall be of opinion that it is necessary in order to secure to your petitioners a full consideration and hearing of their claims and cross errors, to enter such an order) then that this Honorable Court will enter an order herein directing and specifying that on the hearing of this *certiorari* proceeding all the errors assigned by your petitioners in the matter of their said cross appeal, be argued, considered, passed upon and determined, as well as the errors assigned by said United States Rubber Co. *et al.*

19. And your petitioners further humbly pray in the alternative that, if this court shall be of opinion that said relief herein above prayed for in paragraph 18 should not be granted, but nevertheless shall be

of opinion that it is necessary in order to secure to your petitioners a full consideration and hearing of their claims and assignments of error, to enter an order such as the following, then that this court may enter an order directing that said *certiorari* proceedings herein shall be considered, passed upon and determined in all respects as though your petitioners had filed herein their petition for a writ of *certiorari* to be issued out of the Clerk's office of this court, directed to the Honorable Judges of the United States Circuit Court of Appeals for the Seventh Circuit, commanding them to certify to this court the records and proceedings in said cause, so that this court might act thereon as of right and according to law ought to be done, and as though this court had granted the prayer of said petition, and had caused a writ of *certiorari* to be issued thereon, and as though such writ had been issued and the transcript of the record already filed herein had been filed in obedience to said writ as well as in obedience to said writ so actually issued herein as hereinabove set forth.

20. And your petitioners further humbly pray in the alternative that if this court shall be of opinion that neither the relief hereinabove prayed for in paragraph No. 17 nor that prayed for in paragraph No. 18, should be granted, but nevertheless shall be of opinion that it is necessary in order to secure to your petitioners a full consideration and hearing of their claims and the said errors so assigned by them that your petitioners should likewise apply for a writ of *certiorari*, then may it please your Honors to grant unto your petitioners the writ of *certiorari*

directed to the Honorable, the Judges of the Circuit Court of Appeals for the Seventh Circuit, commanding them to certify to this court the record of its proceedings in said cause, so that this court may act upon the said errors assigned by your petitioners, as of right and according to law ought to be done.

21. And your petitioners further humbly pray in the alternative that if this court shall not be of opinion that said relief hereinabove prayed for, or any part thereof, is needed by your petitioners or should be granted then that this court may make some order or give some direction, or announce some opinion as to the practice to be pursued in this case or like cases, and thereby definitely direct the course of procedure to be adopted by your petitioners, in order that your petitioners and other parties now or hereafter standing in this court in the position of your petitioners, may be advised how to proceed with certainty in order to secure a full and adequate hearing, and that justice may be done.

22. And that your petitioners may have such other and further relief, etc.

And your petitioners will ever pray.

American Oak Leather Company; Pfister & Vogel Leather Company; Thomas E. Wilder and John Wilder, co-partners as Wilder & Company; Eagle Tanning Works; United States Leather Company; Lambeau Leather Company; The Barber Bros. Company; Boston Blacking Co.; Bulletin & Good Roads; Carson-Pirie Monthly Co.; Carver Cotton Gin Co.; Calvert Lithographing & Engraving Co.; B. E. Cole & Co.; Colburn, Fuller & Co.; Consumers' Box Manufacturing Co.; The Continent Shoe Company;

Crooks, Root & Co.; Cycling Gazette; Easton Boot & Shoe Company; Estabrook-Anderson Shoe Company; Farnsworth, Hoyt & Co.; I. P. Farnum; C. C. Farwell & Co.; P. A. Field & Co.; Fletcher Mfg. Co.; A. F. Gallum & Sons; H. M. George & Co.; Goldsmith, Rosenbush & Levie; Goodyear Rubber Co.; The R. J. Gunning Co.; M. L. Hiller & Sons; A. J. Marcus & Co.; J. & H. Mayer; H. Michaels & Co.; Milwaukee Tack Co.; W. J. McBride; Pliable Shoe Co.; Rousemaniere, Williams & Co.; Shattuck & Binger; A. W. Shaw & Co.; T. J. Shay & Co.; The Singer Manufacturing Co.; W. W. Spaulding; Spinney, Virtue & Co.; Stowe, Bills & Hawley; Thilmany Pulp & Paper Mills; Tubular Rivet & Stud Company; University of Chicago Weekly; George H. Van Pelt; Wachusett Mills; Weir Bros. Paper Co.; Consolidated Hand Method Lasting Machine Co.; Hilliard & Merrill; Tripp Giant Leveller Co.; Dry Goods Reporter Co. and E. H. Van Ingen & Co.

By JACOB NEWMAN,
FRED A. SMITH,
HORACE KENT TENNEY,
WM. J. MANNING,
G. W. NORTHRUP, JR.,
Their Solicitors.

JACOB NEWMAN,
FRED A. SMITH,
HORACE KENT TENNEY,
WM. J. MANNING,
G. W. NORTHRUP, JR.,
Counsel for said Petitioners.

UNITED STATES OF AMERICA,
STATE OF ILLINOIS,
COOK COUNTY. } ss.

George W. Northrup, Jr., being first duly sworn, says that he is one of the solicitors, and the agent in this behalf of the petitioners named in the foregoing petition, and makes this affidavit for them and on their behalf. That he has read said petition and knows the contents thereof, and that the same is true in substance and in fact, as he is credibly informed and believes. George W. Northrup, Jr.

Subscribed and sworn to before me this 12th day of May, A. D. 1900.

C. T. Bloodgood

Notary Public in and for Cook County, Illinois.

No. 436. 150

Brf. of Quarles, Smith, Northrup & Tenney for Resp.

Con for pt. of resp

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Supreme Court of the United States

UNITED STATES RUBBER COMPANY et al.

vs.

AMERICAN OAK LEATHER COMPANY et al.

No. 436.
Certiorari to United States Circuit Court of Appeals for the Seventh Circuit.

SUGGESTIONS IN CONNECTION WITH RESPONDENTS' PETITION.

J. N. Quarles

FREDERICK A. SMITH,
JACOB NEWMAN,
WILLIAM J. MANNING,
GEORGE W. NORTHRUP, JR.,
HORACE KENT TENNEY,
Counsel for American Oak Leather Co.

Geo. Hornemih & Co., Printers, Chicago.

IN THE

Supreme Court of the United States

UNITED STATES RUBBER COMPANY et al.
vs.
AMERICAN OAK LEATHER COMPANY et al.

No. 436.
Certiorari to United States Circuit Court of Appeals for the Seventh Circuit.

SUGGESTIONS IN CONNECTION WITH RESPONDENTS' PETITION.

May It Please the Court:

The accompanying petition is presented for the purpose of obviating the possibility of having this cause—upon a mere question of technical practice—result in a partial and incomplete decision on the questions involved.

The question of practice here presented is (roughly stated) whether when an equity suit is taken to the Court of Appeals by an appeal prosecuted by the defendants and a cross appeal by the complainants, and when this appeal and cross appeal are heard together in the Court of Appeals on the same record, and one judgment is rendered by the Court of Appeals, adjudicating both the appeal and the cross appeal, and the complainants are successful upon their cross appeal, and

the defendants are unsuccessful upon their appeal, and the defendants thereupon bring this record to this court by *certiorari*—whether under these circumstances this court will determine the whole case and consider the assignments of error upon both appeals, or whether in order to have this court consider the assignments of error upon which they were *successful* in the Court of Appeals complainants are required to take some affirmative step in this court for that purpose, and if so, then what action is necessary to that end.

There appears to be no reported decision of the court deciding the exact question, and we find that the members of the bar differ in their views of the proper practice in such a case. The decision in the case of *Hubbard* v. *Todd*, 171 U. S., 494, which is referred to in the petition, was based upon a state of facts different from that which is here presented; still the opinion there makes a general statement that a *certiorari* proceeding will be considered only upon the assignments of error presented by the person who petitioned for the writ of *certiorari*. In that case there was, as here, an appeal and cross-appeal; but *both parties* were *unsuccessful* in the Court of Appeals, as that court affirmed the decision of the lower court. In the case at bar the appeal of the U. S. Rubber Co., L. Candee & Co., and the Bank asking that the decree holding that they must share the fund *pro rata* with the other creditors be reversed, was unsuccessful, and the appeal of the American Oak Leather Company *et al.*, claiming that the Rubber Companies and Bank should be excluded from participation in the fund was successful.

The dissenting opinion of Mr. Justice Brown, in

which he held that the United States Rubber Company and the other preferred creditors should not be excluded from participation in the fund—the question upon which he dissented from the majority of the court—was an opinion rendered with reference to the assignments of error in our cross appeal. Indeed, it was only by our assignments of error that this question was brought into the Court of Appeals at all.

This court also said in the *Hubbard* case that a *certiorari* hearing stood before the Supreme Court as though it where an appeal by the party petitioning for the writ only. If the court by this language meant to say that a *certiorari* proceeding would be considered as an appeal from the decree of the *Circuit Court of Appeals*, then the question would be relieved of some uncertainty, and there would seem to be no necessity for the party who was successful in the Circuit Court of Appeals taking any affirmative action whatever. On the contrary, it would seem that in such a case all that was required of the successful party was to defend against any attack which the other side might make upon the decree of the Circuit Court of Appeals. If, however, this court meant to say that a *certiorari* proceeding stands before this court as though it were an appeal by the petitioning party only from the decree of the *trial court*, then a different question would arise. We have been unable to find any express decision on this subject.

But as different members of the bar differ in their understanding of the proper practice to be followed in a situation such as this, we have thought it prudent to bring the matter to the attention of the court in order

that this court may, if it deems it proper, indicate in advance its opinion of the practice to be pursued and thus obviate the possibility of this mere question of technical practice being the means of preventing a full decision upon all of the most important questions which the record presents. Such a result would be most unfortunate from the standpoint of the American Oak Leather Company *et al.*

If this question should be raised at the hearing, or should be considered by the court of its own motion, and the court should then be of opinion that some prior affirmative action upon our part was necessary, in order to have all of these questions considered, it would be too late to remedy the matter, and substantial and important rights affirmatively sustained—as the case now stands—by the decision of the Court of Appeals, might be lost.

We would respectfully ask that, if the court holds that the record as it stands is sufficient for the presentation and decision of the questions involved in the assignments of error urged by us in the Court of Appeals, it will give some indication to that effect. If, on the other hand, the court holds that the proper practice requires for this purpose some affirmative action, like the making of an order in this case, directing that our assignments of error be considered with the others, that it enter such order or some other order producing the same result. Or, if it should be deemed necessary to go to the extent of issuing a new writ of *certiorari* in our behalf, that an order for that purpose be entered.

As above stated, the appeal and cross-appeal were

heard and decided together in the Court of Appeals on one record and one judgment was rendered disposing of both appeals. A complete transcript of this record, including these proceedings in the Court of Appeals, was filed in this court by the United States Rubber Company *et al.* with their original petition for *certiorari*.

That complete record has since been duly certified in obedience to the writ of *certiorari*, and has been printed. These petitioners have heretofore entered their appearance here as respondents to the petition for *certiorari* filed by the United States Rubber Company *et al.* The court thus has jurisdiction of parties and subject-matter, and is in a position to make all orders necessary to secure a full consideration of all questions.

Respectfully submitted,

FREDERICK A. SMITH,
JACOB NEWMAN,
WILLIAM J. MANNING,
GEORGE W. NORTHRUP, JR.,
HORACE KENT TENNEY,
Counsel for American Oak Leather Company et al.

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Brf. of Smith, Manning & Tenney
150 for Respondents.

Filed Jan. 10, 1901.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

UNITED STATES RUBBER COMPANY, L. CANDEE & CO. and the METROPOLITAN NATIONAL BANK OF CHICAGO

vs.

AMERICAN OAK LEATHER CO., PFISTER & VOGEL LEATHER CO., EAGLE TANNING WORKS et al.

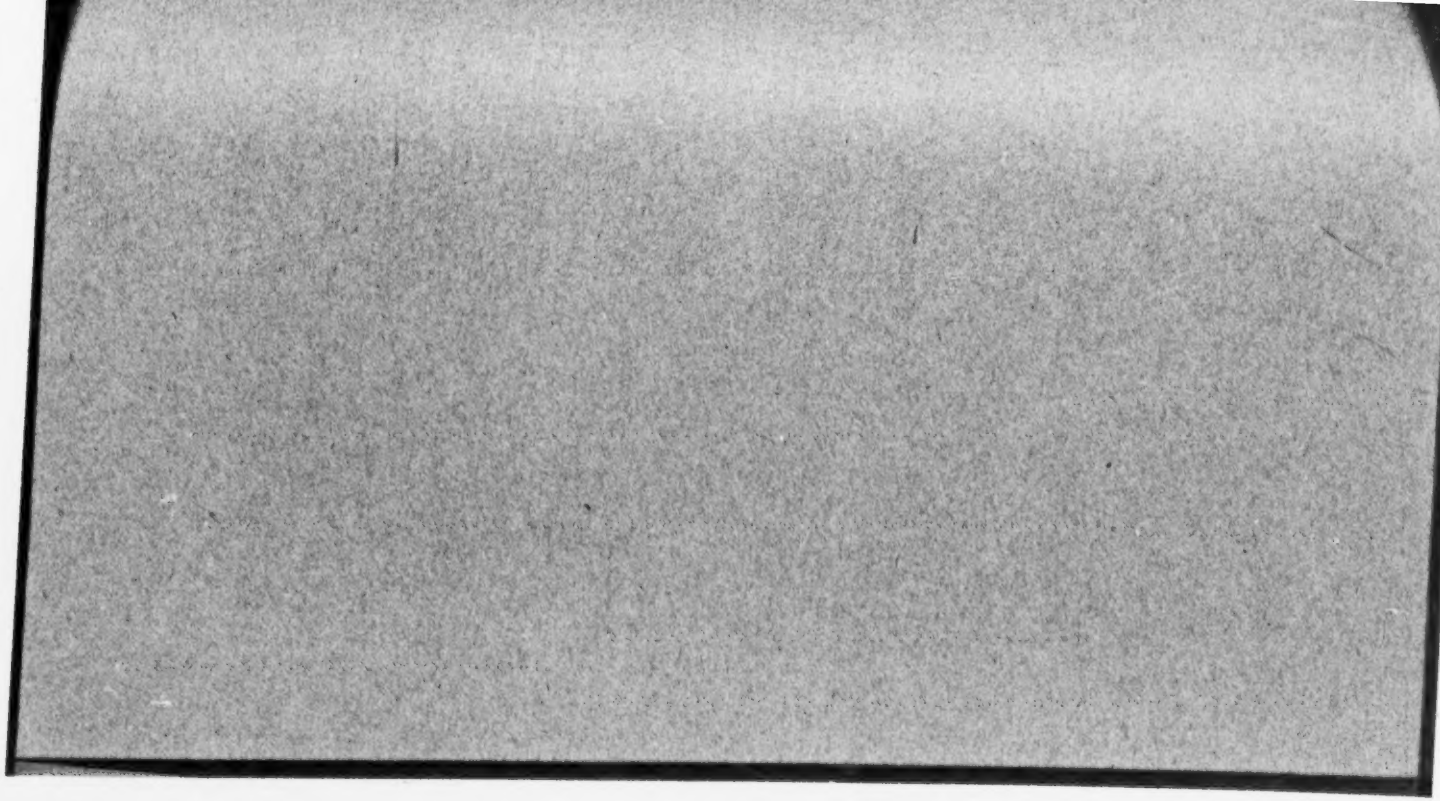
Certiorari to Circuit Court of Appeals, Seventh Circuit.

BRIEF AND ARGUMENT FOR RESPONDENTS,

PFISTER & VOGEL LEATHER CO., EAGLE TANNING WORKS ET AL.

FREDERICK A. SMITH,
WILLIAM J. MANNING,
HORACE KENT TENNEY,
COUNSEL FOR SAID RESPONDENTS.

BARNARD & MILLER PRINT, CHICAGO.



IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1900.

UNITED STATES RUBBER COMPANY, L. CANDEE & CO. and the METROPOLITAN NATIONAL BANK OF CHICAGO

vs.

AMERICAN OAK LEATHER CO., PFISTER & VOGEL LEATHER CO., EAGLE TANNING WORKS et al.

Certiorari to Circuit Court of Appeals, Seventh Circuit.

BRIEF AND ARGUMENT FOR RESPONDENTS,

Pfister & Vogel Leather Co., Eagle Tanning Works et al.

The respondents represented by us are creditors whose debts were all contracted after the giving of the judgment notes to the petitioners and the making of the arrangement of January, 1896. The goods which they added to the stock of Fargo & Co. were all obtained by the suppression of the secret liens under which the proceeds of those goods are now claimed by petitioners. We therefore think that a separate brief on their behalf, upon the facts of the case having special reference to this feature, will supplement the able argument of our associates, and assist the court in its consideration of the case.

STATEMENT.

Counsel for petitioners have confined their statement of the case to a copy of portions of the master's report. As the Circuit Court of Appeals prepared a statement of the case, to which no direct exception has been taken, we refer to it as presenting the main features of the case upon which we rely. It is contained on pages 717-23 of the record.

The Circuit Court upon final hearing held that the preferences were constructively fraudulent, and decreed an equal distribution of the fund derived from the company's property among all creditors, including the Rubber Companies and the Bank, and placing the Bank's claim at its original amount, disregarding the payment of one-half of it. An appeal from this decree was taken by the Rubber Companies and the Bank and a cross-appeal by the complaining creditors. The Rubber Companies and the Bank assigned as error the action of the court in setting aside their preferences; the complaining creditors assigned as error its action in allowing the preferred creditors to share *pari passu*, and in allowing the Bank's claim at its original amount. The position of the complaining creditors was upheld and their assignments of error sustained. Those assignments of error appear at pages 691-2 of the record.

Having been wholly successful in the Court of Appeals, the complaining creditors ask the affirmance of its decree and the approval of its decision upon the issues involved.

I.

THE PETITIONERS WERE GUILTY OF ACTUAL FRAUD.

Counsel for petitioners (pp. 16-17 of brief) seeks to draw the conclusion that the Circuit Court of Appeals deduced actual fraud, not from the motives and intention of the parties to the January arrangement, but from the supposed injurious effects of the transaction upon other creditors "independent of the actual intention of the parties."

The opinion (Rec., 725-734) of that court, on the contrary, is directed to the discussion of the motives and intention of the parties from almost the beginning to the close. It finds the motives and purpose of all the parties fraudulent at each step, and expresses its general conclusion on the question of actual fraud in the following words:

> "It is clear that the Rubber Companies were guilty of *fraud in fact*, and as against subsequent creditors of the Fargo Company should not be allowed to share in the fund or distribution, and for the reasons stated the Bank likewise should be postponed."

It is obvious, therefore, that by the opinion of that court *results* are made to depend on *actual fraud* and upon *motives*, rather than the reverse, as counsel has stated.

Having thus misapprehended the opinion of the court and the ground upon which it is based, counsel for petitioners proceed to base their argument for a reversal of that judgment upon their erroneous understanding of it. That part of their argument we do not care to follow, for it leads us away from the case in hand into a purely academical discussion of an hypothetical case.

The argument of opposing counsel seems to be based on Napoleon's rule of beating the enemy in detail to prevent the defeat which will result from a contest with his combined forces. They take up some of the separate items of the facts arrayed against them and endeavor to show that each one, considered separately, is not a fraud or evidence of fraud. Their legal argument may fairly be summarized as follows:

1. A corporation has the right to prefer creditors.

2. An agreement to prefer is therefore valid because it obligates the corporation to do only what the law allows.

3. There is no obligation on the part of the corporation, or a secured creditor, to disclose either the fact that a security has been given, or that one has been promised.

4. Therefore the concealment of the security, though it induces others to act to their injury, is not a fraud upon them, or an invasion of any of their rights.

5. That the parties did not intend to have Fargo & Co. increase its purchases of goods for the purpose of getting a *larger* stock for the Rubber Companies to levy on, but only to have it purchase whatever goods were needed. Therefore there was no fraud in their purpose of having all the goods which should be obtained levied upon and of preventing the persons who sold the goods from collecting their pay out of them.

We do not deem it necessary to take up these propositions in detail, nor to go over the authorities relating to them which are collated in the brief of our associates, to which we refer.

The question of actual fraud is argued by opposing

counsel as if it were to be determined by investigating the moral perceptions of those who are responsible for the facts which this record discloses. They reiterate the statement that they had "no *conscious* purpose" of harming creditors; and insist that if their clients were not "conscious" that their "purpose" would necessarily harm those who, by the accomplishment of that very purpose, were induced to deal with the corporation, the law acquits them of any wrong-doing. In short, their contention is, and must be, that the court must accept the estimate which they placed upon their own acts, and cannot exercise an independent judgment unclouded by the effects of self-interest.

In speaking of the purpose which actuated the parties, counsel say that it was merely that of getting a preference, which is recognized as legitimate. This is put forward as being the ultimate object of all that they did, and, as a preference is not an illegal thing, they contend that the means by which they sought to secure it are of secondary importance.

The plan which these parties devised was a somewhat complicated affair, involving a number of details, but its main purpose may be fairly stated in this way. It was to let the company continue in business, concealing the true condition of its affairs in order that creditors should be induced to sell it goods. Obtaining those goods was the essential thing, for without them the company must cease business at once. This, then, was the ultimate object of the whole plan. And if the extremely probable contingency of the company's failure arose, the goods thus obtained were to be applied solely to the payment of the judgment notes by the suppression of which they had been

obtained. The elimination of the possibility of the creditors who sold the goods getting their pay out of them, was an end to which the parties and their counsel devoted all their energy and ingenuity.

The parties implicated in the transaction, in describing its object say that it was "to enable the company to continue in business." But when we consider what they knew this involved, it will be clearly seen that it is but a euphemism by which they concealed—possibly even from their own moral perceptions—the real nature of the transaction. Continuing in business not only necessarily involved, but actually *meant,* buying new goods, and buying them on credit from persons who would have no means of collecting pay for them, except through legal process against the company's assets. We do not mean to say that "continuing in business" implied nothing but *buying* goods; it of course also involved selling them, and keeping up the ordinary incidents of mercantile business. But these were all dependent upon getting goods with which to carry on the business.

That these parties all had this matter of getting goods very clearly in mind as the one of first importance in their scheme is demonstrated by the testimony of each one of them. Indeed, it furnished the sole reason for the secrecy about which they were all so frantically anxious. Absolute secrecy as to their plan was essential only because no goods could be obtained, if the facts became known to those from whom the goods were to be solicited. Their keen appreciation of this obvious fact is shown in Mr. Fargo's testimony, where he says that none of the creditors would have sold the company any goods, or had any dealings with it, if they had known of the January ar-

rangement, and that the effort was therefore to keep it secret. (*Record, pp.* 278-9.)

We must then take it to be an established, and indeed a conceded, fact that the object of the plan was to get goods from other creditors, and to get them by suppressing facts which rendered the corporation utterly unworthy of the credit which was thus to be secured for it.

Passing for the moment the admitted fact that the company's assets at this time were much less than half the amount of its liabilities, and considering only what counsel ask the court to believe these people all thought about its condition, we still have the admitted fact that its *immediate* failure was imminent unless it could borrow money. This fact was not only known to them, but it furnished the very reason for their action. And it is undeniable that knowledge of this fact by persons with whom they dealt, would have prevented the company from obtaining goods, *even if no security whatever had been given to the Rubber Companies.* No business man would have entertained the idea for a moment of selling goods to a corporation which could not pay its existing debts, even if he knew that other creditors would receive no greater dividend than he. It was therefore essential to the success of the scheme that this fact, as well as the preferential securities, be kept secret, so that those whose conduct would be influenced by knowledge of the fact would act upon a false supposition.

There were thus, by the *conceded* facts, three things which were to be suppressed:

1. That the company could not then pay its debts as they matured, and must immediately fail, unless it could borrow money—which, when borrowed, increased both

its debts and assets by the same amount, and thus left its ledger balance the same.

2. That the Rubber Companies had the means of getting a preferential lien at any time.

3. That other creditors were cut off from the possibility of getting security, *even on their own goods*, either superior to or on an equality with the Rubber Companies

In connection with these facts the control which the Rubber Companies had over the corporation has a sinister significance, apart from its legal effect. No argument is needed to show that they had such control, and any attempt to make these directors appear in any light but that of mere tools only serves to make the real fact plainer. This control was not a mere preventive power, a check on the giving of other judgment notes. It went farther than that and included the exercise of all corporate powers. This necessarily resulted from having a majority of the board. The negative exercise of that power by agreeing to let the Fargos run the business without interference from these directors, was but adding to their power to comit frauds on creditors, with the assurance that they would not be prevented. And we have seen with what fraudulent effect the Fargos used this power. But Mr. Beale and his clients contemplated and expected more than that; for they stipulated for five out of the seven directors, so that they would always have the necessary majority for *affirmative action* (*Record, p.* 556). Thus, by the agency which was created with that end in view, they made it possible to accomplish the purpose of getting in goods, and preventing the creditors who sold them from getting their pay.

Now, it is well established that—whatever the parties

may have believed about it—the company was in fact hopelessly insolvent, and that the credit which was secured for it was a credit to which it was not entitled. Keeping up its credit and securing new credit for it, therefore, necessarily involved a deceit as to the actual situation. And the parties who caused the deception admittedly had —to put it most favorably for them—actual knowledge of facts which put them on inquiry as to the company's true condition, the means at hand of ascertaining the truth, and abundant opportunity for investigation. The persons upon whom this "innocent" deception was to be practiced were designedly kept in ignorance of those facts.

If Johnson and Sadler had merely advanced money and agreed to keep silent as to the facts which they knew showing the company's precarious condition, they would have better title to the character of philanthropic benefactors of humanity which counsel claim for them. But their plan did not stop with the "innocent" deception of suppressing insolvency and preferential securities. They bargained for and secured the means of seizing the goods which the deception brought into Fargo's store. And thus they arranged it so that they would win in any event, and placed the hazard of the success of the enterprise solely on those who had been misled, by a false pretense, into selling goods for which they could not get full pay, even were there no preferences; and by the preferences they were to be prevented from getting anything.

We have thus far, in considering this question—if it be a question—of "conscious intent," referred only to admitted facts stated by the parties themselves. And before referring to anything which is the subject of controversy we will call attention to the position which opposing counsel take upon this point.

They say (*brief, p.* 19) that "there was no agreement, discussion or intention that the Fargo Co. should proceed to *increase* its tangible assets." And in support of they quote (*brief, p.* 28) this sentence from the opinion of the Court of Appeals: "It was not, as alleged in the bill, a part of the plan that *increased* purchases should be made for the purpose of *improving* the security of the Rubber Companies." (*Record, p.* 729.) Thus counsel would make the *extent* of a fraud the test of its *existence*. It certainly can make no difference favorable to the Rubber Companies that the resulting injury was not greater. They intended that goods should be bought, and that they should have a lien on those goods to the exclusion of the men who sold them. They secured themselves and put the hazard of insolvency upon the others. It would clearly be a fraud to do this as to one creditor alone; the number of persons to be injured and the extent of their injury affects only the degree and not the quality of the fraud. That the fraud did not go to the full extent which the situation may have rendered possible, is no credit to them; nor does the scheme deserve less condemnation because the parties to it seem, like Warren Hastings, "to wonder at their own moderation." The injury to those who were injured is exactly the same, and it is that injury which calls for redress.

Their desire to get the company on a more conservative basis by reducing its debts, was in line with the furtherance of their own interests in keeping the company going. They had nothing to *gain* by its failure, for all they could collect in any event was the amount of their debts; and they wished it to go on, if possible, because it furnished an outlet for their goods. But they put the chances of its success upon those whom their conduct misled. To claim

for them credit for the fact that they bought less goods than they might have procured, or that they did not increase the stock—when from their standpoint such increase was unnecessary,—is to admit that they actually considered the effect of the scheme on the new creditors, and sought to make its evil consequences as light as possible. It is like saying that there was no fraud in taking the goods of two creditors, if they might have taken those of three.

While it is true that the law sometimes concerns itself with a man's motive or intent, it never concerns itself with his estimate of it. He is presumed to intend the natural result of his deliberate acts, and his liability and culpability are not regarded as lessened because eagerness to attain a particular result, or the blinding effect of self-interest, or a blunted moral sense may have prevented him from appreciating the true nature of either the end which he sought, or the means adopted to reach it. This principle is so elementary that, as Judge Woods most aptly said, "without it a coherent code of law or morals would be impossible." We therefore cannot regard it as important to enter into any discussion of the "consciousness" of these parties of true nature of the "intent" which guided their actions. It is admitted that everything which was done was intentional and a part of a carefully arranged plan. And we find no dispute in counsel's brief over the correctness of the following statement by the Court of Appeals as to the intent of these parties:

> "What did these people intend as to other creditors? Plainly that they should remain or become creditors without security or the possibility of obtaining it, and be at the mercy of themselves, who by a secret control of the corporation were to be able at any hour to close its doors and appropriate all its property to the payment of their own demands."

We have thus far discussed this question upon the facts which petitioners concede, and as though none of the parties doubted the company's solvency. That, however, is a conception of the facts which we submit cannot be accepted.

Take first the knowledge of Fargo upon that question. It cannot be believed that he did not know the real condition of affairs. His own testimony on the subject is most significant. In response to suggestive and leading questions put to him by Mr. Beale he said that he told Johnson and Sadler that he believed the company was solvent; that he believed it had "ample assets to pay all its liabilities in due course of business." What a ridiculous statement this last one was in an interview which was brought about because of the conceded inability of the company to pay its debts "in due course of business." Having testified to this he was asked, "As a matter of fact, Mr. Fargo, you continued to believe the company solvent, did you not, down to about August, or down to about the time of the failure? Ans. Yes, sir." (*Record, pp. 226-7.*) It will be observed that he nowhere denies or suggests that he did not know the amount of the company's assets and liabilities; indeed his examination, as a whole, shows great familiarity with it. And he says that the company did not sustain any losses *which affected its financial condition* between January and August. (*Record, p. 270.*) As he knew the actual facts on which the question of solvency or insolvency depended, we discredit the conclusion which he seeks to draw from them as to his own belief, when to have said the contrary would have been a confession of the most flagrant fraud. And we certainly object to having our clients' rights decided upon his opinion of solvency, when we know that

it was because his company actually was insolvent, according to the well known legal definition, that he asked the Rubber Companies for aid. If he had been in any respect misinformed as to the amount of the company's debts or assets, it would have been an easy matter for him to say so. His failure in this regard, and the failure of the Rubber Companies to offer any evidence to show that he did not know the actual fact is a practical confession. And it is to be remembered that his examination on this point was conducted by Mr. Beale and that none of the other Fargos were placed on the stand.

The view which the Fargos took of the company's condition is well illustrated by the prudent regard which they showed in protecting their own individual interests against the chances of its failure. Prior to January, 1896, they had endorsed the company's notes and at that time such notes to the amount of at least $15,000 were outstanding. These notes were shortly afterwards taken up, with the money obtained from the Rubber Companies, and none of the company's notes were endorsed by them after that time. (*Record, pp.* 214-5.) They thus protected themselves against the hazard of failure, and did not share that hazard with those whom, by direct false statement and suppression of the truth, they induced to furnish goods and money to the company. And when the failure come, through the flimsy pretext of a "loan" from the Bank, they took out $10,000, on the ground, as Fargo says—with a frankness which shows his blunted sensibilities—that "they needed it to live on." Thus we find them at both periods—in January, when it is claimed that they were ignorant of the insolvency, and in August, when it is conceded that they knew it—protecting their personal interests at the expense of the defrauded cred-

itors. Is this a mere coincidence, or does it point to a continuing purpose?

The opinion of the Court of Appeals shows plainly how Johnson and Sadler must have appreciated the true situation of affairs. The very facts laid before them discredited any statement which Fargo might make that his company was solvent. No intelligent man would accept such a statement and act upon it, without inquiry, in an important matter where the means of investigation were right at hand. The conclusion is simply irresistible that they would have done just what they did, if they had examined the books and learned the actual facts which were there recorded. They were making the best bargain they could in a desperate situation, and taking measures which they believed would be effectual against other creditors. In 1893, a time of financial panic, when even solvent houses were in danger, they did not ask security, because they believed the company solvent; and they took judgment notes only because the Bank had exacted them. But they took none of these extraordinary precautions against giving similar securities to other creditors, because they believed the assets sufficient to pay all creditors. Is it possible to believe that two such contrasting lines of conduct were actuated by exactly the same view of the company's solvency? Were these barriers against other creditors, which were unnecessary in 1893 *because* the company's assets were sufficient to pay all creditors, regarded as necessary in 1896, *for the same reason?*

The whole theory of the petitioners' case admits that Fargo and the Rubber Companies were actuated by a common purpose. This is obviously true; for the plan was an entire one, and the intent of one party was no

better than the intent of the other. We consequently find the counsel for the Rubber Companies defending the honesty of Fargo's motives by the same reasoning and evidence which they apply to their own. This is sharply referred to in the opinion of the Court of Appeals, where in speaking of Fargo's confessed deceit of the Pfister & Vogel Leather Co., it says: "His testimony on this point presents an interesting picture of one who, in all this transaction, is credited with having had no wrongful purpose."

If a fraudulent motive on the part of Fargo is shown, there is no theory presented by which that intent can be separated from that of the Rubber Companies, or by which it can fairly be said that Fargo was actuated by one intent and Johnson and Sadler by another. This is well illustrated by the question of the knowledge of the company's condition. It is petitioners' theory that both Fargo and Johnson and Sadler took the same view of the company's condition. This position they are necessarily bound to take; for it could hardly be believed that these men engaged in a common purpose, one actuated by knowledge of the company's insolvency, and the other by a belief in its solvency.

We think it cannot be doubted that the Fargos had knowledge of the company's insolvency, which was too gross to be overlooked; and the studious avoidance of inquiry by Johnson and Sadler shows what they thought investigation might disclose. The established and conceded facts show that the Fargos were guilty from the start of unmitigated fraud. In February, 1896, within a month of the giving of the judgment notes to the Rubber Companies, Frank M. Fargo—who was still held out to the world as the treasurer of the company, though he

had been succeeded by Mr. Beale's clerk—applied to the Dixon banks, with whom the company had not till then had any dealings, for loans. In response to direct inquiries made by the banks' officers he stated that the company had no judgment notes outstanding, that it was prosperous and making money, and that it had a capital of $400,000, and a surplus of $170,000 (*Record, pp.* 308, 311, 313). On the strength of this statement he obtained for the company $17,000.

On April 1st, 1896, Charles E. Fargo made a statement to the mercantile agency of R. G. Dun & Co., giving the items of assets and liabilities, and showing a net surplus of over $416,000. (*Record, pp.* 327-8.) On this statement an extension was obtained from the American Oak Leather Co. of its debt of over $12,000.

On July 22nd, 1896, he stated to Mr. Vogel, of the Pfister & Vogel Leather Co.—from whom he obtained more than $20,000 in goods after the January arrangement was made—that the business was never more prosperous, that the company had two dollars in assets for every dollar of debts, and that no one had any judgment notes or preferences (*Record, p.* 318). It is to be noted that this interview was only two weeks before the failure, and only four days after he and Mr. Beale had been arranging for the entry of judgment on the Rubber Companies' notes if an extension could not be secured of a note of $10,000 held by the Metropolitan National Bank. (*See Mr. Beale's telegrams of July 16 and 17, Record, pp.* 593-4.) The note on which that extension was secured from the Bank matured on the 21st, so that his statements to Mr. Vogel and his arrangements with Mr. Beale to enforce the security given the Rubber Companies were substantially contemporaneous.

It may be true, as stated by Mr. Justice Brown, in his dissenting opinion, that no one was injured by these false statements but the persons to whom they were made. But the cogent force of these facts is, we submit, in no way lessened by that consideration. They simply demonstrate not merely the fraudulent but the iniquitous purpose which actuated the Fargos, and remove all ground for even a pretense of good faith on their part. These fraudulent statements were not made casually, or at any particular time or by one of the Fargos alone. They were direct and deliberate, they covered the whole period from January 6th to the failure, and were made by both of the men who were instrumental in getting up the scheme, of which the suppression of the truth was the essential element.

It is taking a narrow and contracted view of the equities of this case to say that the Rubber Companies have no responsibility for these fraudulent statements. Perhaps it may be true that they could not be held liable directly to the injured parties for the resultant damages; but that is not the question. The combination between the parties lacked no essential element of a conspiracy, and the acts and declarations of conspirators, in furtherance of the common design, are the acts of all. What was the common design in this transaction? It was concededly to obtain credit for this company. What was the purpose of these fraudulent statements, and what was their effect? Manifestly to obtain credit for the company. The ordinary methods of business, with which these men were familiar, necessitate the making of financial statements as a means of obtaining credit. The Rubber Companies did not come in contact with persons from whom credit was to be asked, and therefore the very situation relieved them

from the necessity of answering what some of the witnesses called "embarrassing questions." That matter was in the hands of the Fargos as one of the ordinary incidents of the running of the business, and the dummy directors who represented the Rubber Companies *were expressly pledged not to interfere with them in the conduct of the business.* The Rubber Companies, and the agencies which they created and of which they made use, were pledged to advance the common end by the concealment which was intended to deceive. One party to this combination thus aided the accomplishment of its purpose by *suppressio veri*, to which the other added *suggestio falsi.* Each fulfilled the part which was assigned to him, if not by definite arrangement, at least by the natural outcome of the situation which they united in creating.

If moral turpitude is the test, is there so much less of it in suppressing the truth, than in stating a falsehood that a court of conscience will seize upon the difference as a reason for creating degrees of responsibility between wrong-doers?

We contend, then, that as these parties were concededly united in a common plan and actuated by a common intent, the establishment of an intent on the part of the Fargos which was not merely wrongful, but almost criminal, leaves no ground for the contention that their co-conspirators occupied a higher moral plane, or were swayed by more praiseworthy motives. That the acts of one party to the conspiracy within the general lines of its purpose must be treated as the acts of all, *or as showing the intent of all.* And that, even if the Rubber Companies are acquitted of moral turpitude, they cannot, at the

expense of the defrauded parties, be freed from responsibility for the acts of associates with whom they bound themselves in such close alliance.

But if we are to concern ourselves with the view which the Rubber Companies took of this combination, and the appearance which it had to them when they were formulating it, we do not fail to find evidences that they saw it, even if somewhat dimly, in its true light. Mr. Porter made a careful examination of the law with reference to fraudulent preferences by insolvent corporations, and the rights of creditors, who attacked such preferences (*Record, pp.* 446-8). Can we believe, as counsel contend, that there was nothing in the situation which suggested to him the question of fraud and insolvency? He tries to explain this by saying that he feared *subsequent* insolvency. Can we believe that these careful lawyers actually thought that *subsequent* insolvency could in any way impair a security taken in good faith from a solvent debtor? Their acts, too, show that as the result of an examination of the law they actually decided some of these questions contrary to their present contention. It will be remembered that the entire scheme, in all its details, including the judgment notes, and the change in the board of directors was agreed upon, and all the necessary papers, resolutions, etc., prepared before any step was taken. Being one common scheme a court of equity would treat its different steps as parts of the whole and not as disconnected transactions. Yet Mr. Beale and Mr. Porter did not dare to have the resolution authorizing the judgment notes passed by the clerks in their office "*upon the ground that they were substantially preferring the claims of the Rubber Companies*" (*Record, p.* 447). They therefore had that resolution passed by the old board whose

places were to be supplied, as soon as this perfunctory ceremony was performed, by the young men who were already selected for that purpose. The flimsy character of this mere tribute to empty form shows clearly that the transaction was understood to be one whose substance was such that no formality which might give it the appearance of fairness and legality could safely be omitted. And how completely this refutes the contention of counsel (*brief, p. 25*) that "The rule prohibiting directors from preferring themselves when contemplating a cessation of business has no application. The preferences of the Rubber Companies were not to directors. In granting them Fargo & Co. and the Rubber Companies dealt at arm's length."

The view which these men took of the matter, after looking up the law on the question of fraud, is quite clearly shown by Mr. Beale's own statement of the fears which he entertained of the rights which the Metropolitan National Bank might thave to attack the scheme. He says that he discussed with his clients the necessity of not allowing Fargo to borrow any more money from the Bank after the judgment notes were given, because that would put the Bank "in a position *where it could claim to have been deceived.*" In the same connection he says he does not think the position of merchandise creditors entered the mind of Johnson, Sadler or himself. In fact so totally does he say he ignored their position, that he referred only to the Bank in telling Fargo to keep his indebtedness down and refrain from branching out. (*Record, pp. 563-4.*) It is thus admitted that he keenly appreciated that it would be a fraud to *allow* Fargo to obtain credit from one who was ignorant of the facts which he had created. The very question involved in this

ase thrust itself upon him, and was decided adversely to he present contention of the counsel who now represent he clients, who, in 1896, were advised by Mr. Beale that uch a scheme *was a fraud on future creditors.* His houghts, according to his present recollection, were cen- ered on the Bank because it was a definite creditor with whom he was personally acquainted, and of whose posi- ion he was aware; and this may have caused him to for- get or overlook the creditors whose position would be exactly the same, but who were to him an indefinite body of unknown persons. But can this change the real char- acter of the act or of the intent which actuated it? Was it a fraud to borrow from the Bank because Mr. Beale thought of it, but no fraud to buy goods from others, be- cause he did not think of them at all? The proposition is one which is not open to argument. And we answer all the analytical theories of opposing counsel as to in- tent, and "conscious purpose," by the judgment of con- demnation which Mr. Beale and Mr. Porter themselves pronounced. They were simply so blinded by zeal for a client that they did not view the *entire* matter in the true light which all its necessary and logical consequences fur- nished.

In view of all the facts, however, it is clear that the position of subsequent creditors did present itself to Mr. Beale's mind; for how else can we explain the fact that in the written agreement,—which although not signed, he says stated the understanding of the parties—he in- serted a specific provision that judgment should be at once entered against the company if it attempted in any way to create a lien on its assets in favor of existing or *future creditors?* (*Record, p.* 588.)

It is insisted by counsel that the absence of fraud is shown by the fact that the debts of the two Rubber Companies were reduced from January to August to the extent of only about $7,500, and that during the same period the company paid out in the aggregate, a large sum to other creditors. Here again, we submit, counsel confuse the *extent* of a fraud with its existence. The importance of these facts lies not in the amount of the reduction of the Rubber Companies' claims, but in the unwillingness of those companies, *although secured,* to give to the company the same credit which they desired it to obtain from others. If they had voluntarily extended their lines of credit it would have furnished something more nearly approaching evidence of their alleged confidence in its solvency, than is shown by their actual conduct. But that was exactly what they carefully sought to provide against. The money which they advanced would necessarily be largely used in the payment of their own claims, and an actual and absolute increase of their debts was therefore provided against. The money was so used and by far the greater part of the notes of Candee & Co. were taken up as they matured. No goods were sold by either company, but those which were shipped by the United States Rubber Co. were sent on consignment, so that no credit was *given* at all. Stringent measures were provided to keep these goods, even while in the Fargo warehouse, in charge of a custodian for the Rubber Companies; and to keep the proceeds of sales deposited in a special account in bank. The conceded object of all this was to *prevent the possibility* of Fargo & Co. getting from the Rubber Companies the credit which it was to get from others; and so important was this deemed that Mr. Beale thought it wise to remind his clients of the

necessity of "not letting the Fargo indebtedness increase." The indebtedness which arose for consigned goods sold by Fargo & Co. in the interval was not due to any credit *given* the company. On the contrary, Fargo simply failed to deposit *all* of the proceeds of those sales in the special account which the Rubber Companies had compelled him to open. The creation of that debt was an *absolute departure* from the plan as arranged in January and from the intention of the Rubber Companies; and therefore, furnishes evidence against, instead of in support of, their claim of good faith. But even with this increase, the Rubber Companies were better off at the time of the failure than in January, and would have lost less money by a failure then, without their being secured, than they would in January. *This is not true of the complaining creditors.* And this, it seems to us, shows the fallacy of the contention that the fact that the company paid off the debts owing in January has any force against these creditors. It simply paid off a large number of creditors, and then incurred debts with new ones and increased very largely the debts of those from whom it continued to buy. Obviously this increased credit was influenced, if not absolutely secured, by the payment of the previous debts; for clearly no creditor would largely increase his sales to the company, if it allowed prior bills to remain unpaid. Take as a concrete example the case of the Pfister & Vogel Leather Co. In January the company owed it less than $2,000, and in no year had its *total* sales exceeded $10,000, and as the goods were sold on sixty days' time, the balance due at any one time would be very much less than that amount. Between January 6th and June 26th, 1896, Fargo & Co. purchased from it goods to the amount of $20,504.32, more than twice as

much in less than six months, as had ever been previously bought in a year. Payments on these purchases still left a balance of $17,557.90, two and a half times as much as the amount by which the debts of the two Rubber Companies was *reduced*. If the Pfister & Vogel Leather Co. had paid to Fargo, *for the privilege of not giving him further credit*, the $10,000 which, at the time of the failure, he put in his pocket, it would have made money by the transaction.

The debt of Wilder & Co. was increased from $1,275 in January to $4,600 in August; and the debt of the Eagle Tanning Works, to whom a small balance was owing in January, was increased to $2,500, by purchases made after April 1st.

In the face of such examples, and many others which the record discloses, how idle it is to contend that the equities of these defrauded creditors are in any way affected by the fact that others were paid *at their expense*, or by the fact that the small amounts due them in January were paid as a means of getting greater credit. To sustain such a position is to forget the impropriety of "robbing Peter to pay Paul."

THE POSITION OF THE METROPOLITAN NATIONAL BANK IN CONNECTION WITH THE QUESTION OF ACTUAL FRAUD.

The questions relating to the Metropolitan National Bank are dismissed by appellants' counsel with the statement that the Court of Appeals "does not find Bank guilty of actual fraud." Certainly such a form of presenting the case of one who seeks affirmative relief in this court furnishes little ground for discussion, and leaves

what the Court of Appeals says and holds on this question entirely unanswered.

It can hardly be doubted, as a legal proposition, that if the scheme between Fargo & Co. and the Rubber Companies was a fraudulent one, the Bank, by making itself a party to it, and uniting in an endeavor to enforce it against the other creditors, is affected by that fraud. To assist in the accomplishment of a fraudulent scheme originated by another, does not involve a less degree of either moral wrong or civil liability, than to originate the wrongful plan.

The part which the Metropolitan National Bank took in the transaction in August cannot be viewed as the giving by Fargo & Co., or the receiving by the Bank, of an independent security, but must be regarded as a part of the transaction originating in January. All of the witnesses in their testimony speak of it as making the Bank a party with the Rubber Companies in their scheme. So clearly was this seen to be both its purpose and effect, that the consent of the Rubber Companies to this action was solicited by Fargo, before he went to the Bank about the matter. The action of the parties from that time on showed both absolute community of action on their part and a keen appreciation by them of its necessity.

Although it is now pretended that each party believed that the assets of the company were enough to pay, not only their own claims, but those of all other creditors as well, the Bank stipulated that its claim should stand on the same footing as to priority as the Rubber Companies' claims; and the latter—having, upon the theory of innocence in the transaction, no earthly motive for conceding this—agreed to it.

It will be seen that the Bank held a position which made both Fargo and the Rubber Companies anxious to have its interests united with theirs. Fargo desired to get the $10,000 for the personal use of himself and his brothers. The Rubber Companies, as Mr. Beale concedes, had been from the first fearful of the legal right which the Bank might have to attack their preferences, on the ground that it had been deceived. Such deceit, with the knowledge of these parties, had been practiced upon it twice since January, by getting it to grant extensions, which were so plainly obtained by substantial imposition that neither Mr. Beale nor Mr. Fargo was willing to take the chance of obtaining them by a personal interview. Its situation was concededly such that Fargo's own sense of honesty finally revolted at obtaining further extensions from it, even by the tacit misrepresentation involved in merely asking for them. With all these considerations, and the glaring insolvency of the company before them, the parties—to use Mr. Fargo's expression—"opened their arms and took the Bank in."

While some suggestion is made in the brief of opposing counsel to the effect that the Bank did not know of the scheme of preference which the Rubber Companies held, when it took its security, the contrary is not only conceded by all the witnesses on the stand, but is expressly conceded in the answer of the Bank. The answer says that it learned of the existence of an agreement between the Rubber Companies and Fargo, by which the former were in a position to secure preferences over other creditors; that, having learned of this fact, it caused steps to be taken to ascertain the details (*Record*, 113). All that was done in making the Bank a party to the scheme, and

securing its claim, was agreed on in advance and actuated by a common design. It all took place after Fargo had acknowledged his inability to go on in business, and when the only discussion was as to the details of the manner of conducting the failure. This involved the following steps, all of which Fargo says were agreed on before any papers were executed:

1. The advance of $10,000 by the Bank, for the personal use of Fargo and his brothers. This was made to take the form of a loan by the Bank, as a means of disguising it from mere embezzlement; but that all parties knew the money was going to stay in the hands of the Fargos, to whom it was paid, is conceded.

2. The conveyance to the Bank of the Dixon property, in payment of $25,000 of its debt.

3. The consolidation of the claims of the Bank and the Rubber Companies and of all securities which each received, and an agreement to divide *pro rata* all moneys which either collected. This agreement was not limited merely to an agreement for division, but in express terms provided "that the parties had determined to unite their efforts to collect their respective claims against said company, and share *pro rata* in the results thereof." It also provided that all of the property of the company, including the real estate conveyed to the Bank, should be subject to the "control, management and manipulation of the firm of Isham, Lincoln & Beale, who should act as trustees for all parties, and whose actions and judgment should be conclusive." (*Record*, 385-6.)

It is difficult to believe that the Rubber Companies, in making an agreement of this kind, were not actuated by a lively sense of the danger which they had to fear from

an attack by the Bank, and the desire to actually bind it to sustaining their preferences. And from first to last the conduct of all these preferred creditors has been consistent with the terms of this agreement. The same counsel represents them in this court, and the only theory upon which he presents their case is, not that the Bank stands in any better position than the Rubber Companies, but on behalf of the Bank he champions the cause of the Rubber Companies and denies that they were guilty of any fraud.

That the true relations between the Rubber Companies and Fargo were plain to Mr. Keith's keen business intelligence the moment the matter was broached to him, is shown by his own words, in which he says that he saw that the directors of Fargo & Co. were acting under the control of the Rubber Companies, and that Fargo was a tool in their hands.

The $10,000 which the Bank advanced to the Fargos was concededly paid as a part of the scheme of preference, and with knowledge by Mr. Keith that it was to be used for the personal benefit of the Fargos. An attempt is made to cloak this fact by the assertion that the Fargos had some sort of a claim on the company, warranting them in taking this money. It is perfectly obvious that, as officers of the company, they could not secure a preference over other creditors at the time of its failure. And by the law of Illinois, an attempt to do so is fraudulent; and an attempt to collect the claim of an independent creditor by consolidating it with such a preference affects even the good claim with the fraud and avoids a preference which covers both. This is decided in the case of *Atwater* v. *American Exchange Nat'l Bank*, 152 Ill., 605.

But there is no evidence in this record from which it can be satisfactorily concluded that in fact the Fargos had any such claim against the company. Certainly the burden was not upon the complainants to make any showing of the non-existence of such a claim, after Mr. Fargo had specifically testified that he obtained this money for himself and his brothers to live on, and told Mr. Keith that that was his purpose. This testimony shifted the burden of proof to the defendants to show justification for the payment of the money. Their testimony on the subject was limited to showing that Mr. Fargo told Mr. Keith that he and his brothers had pledged their bank stock as security for their individual notes, but had used the money in the company's business. No attempt was made to prove, by either Fargo or his brothers, that in fact any such transaction as this had taken place. In saying this we do not overlook the fact that, in response to a very general and leading question put by Mr. Beale, Fargo said that he and his brother had advanced more than $10,000 to the company (*Record*, 265). No statement was made as to when the money was advanced, by which one of the brothers, whether it was the money obtained on the notes secured by the pledge of the bank stock, or any other detail of the transaction given—or even a statement that the money remained unpaid. On the contrary, a very different coloring is given to it, when it is remembered that this answer was given as an explanation of the witness' statement immediately preceding, that the money was divided between him and his brothers, "because we had to have some money to live on, and the corporation owed it to us." The absence of any evidence actually showing the existence of a debt which could justify the payment of this money is strikingly significant.

The intent with which parties enter into a transaction is often evidenced by an attempt on their part afterwards to cover up its real nature. An excellent example of this is furnished by the sharp contrast between the testimony of Mr. Fargo and that of Mr. Keith as to the actual transactions which occurred at the time of the failure and the description of those transactions in the answer of the Bank and in the affidavit of Mr. Keith filed in the case. In that answer and affidavit the transactions involving the Bank's security, the advance of the $10,000 and the determination of the Bank to buy the land, are stated as separate, successive and independent transactions, and an evident attempt made to state them as not being brought about by the corporation's insolvency. (*See answer, Record,* 112-13; *Affidavit,* 659-661.)

Both the Rubber Companies and the Bank are now, in addition to this, jointly contending that the Bank should not only have its claim recognized and paid, but paid to the full extent of $50,000, notwithstanding half that amount was satisfied by the transfer of the land. For some reason, which we cannot understand, and which may have been the result of pure oversight, the Circuit Court adopted that view, and directed the payment of the Bank's claim *pro rata* with other creditors at its original amount. This is obviously in the teeth of the conceded facts. It is testified to by all the parties that the Bank received the land in payment of one-half of its debt, and actually canceled and surrendered the $25,000 note. So that it has, even against Fargo & Co., no claim exceeding the amount of the remaining note.

So far from ever repudiating or seeking to set aside the cancellation of the debt, it set the fact up in its an-

swer, asserting its ownership of the land and the discharge of the debt. There is no pretense that any misrepresentation was made in inducing it to accept the land at this valuation, or that it did not know all of the facts. If there were a cross-bill or other proceeding for the purpose of relieving the Bank from the effect of this cancellation of the debt, the evidence which this record furnishes would inevitably defeat the attempt. The transaction is binding as between Fargo & Co. and the Bank. The Bank still has the deed which it accepted, and Fargo still has the canceled note which the Bank delivered to him.

The $10,000 which the Fargos obtained from the Bank can be included in the latter's claim only at the expense of the violation of the equities of the defrauded creditors. To add to this the injury of paying the claim on the basis of its original amount, would simply put a premium upon fraud. This is not a matter which concerns the Bank alone, but the Rubber Companies, who share in whatever it collects, are also interested in enforcing this grotesquely unjust view of its rights. They are seeking thus to escape—and at the expense of an added fraud on the creditors—the result of the taking of the land, which they now wish to exchange for cash at par.

The authorities upon the subject of fraud and fraudulent intent are collated in the brief of our associates; and they answer fully the legal propositions put forward by petitioners' counsel. Indeed, it seems to us that the legal question must be decided by reference to fundamental principles about which there can be no dispute. It is true that, in speaking of fraud in fact, courts sometimes say that it is fraud which involves "intentional wrong." But

this does not at all involve the idea that the guilty party must intend to do evil *as such*. The law does not concern itself with the inquiry whether he actually perceived the real quality of his act. It does not make him the judge of the rights of the person affected by his acts, nor limit those rights by either his view of them or his disregard of them. It places all men upon a mental and moral equality, and holds them responsible for the natural consequences, whether actually foreseen or not, of their deliberate acts.

In the case at bar the Rubber Companies concededly intended that third persons should be induced to sell the goods upon a false basis, and that they should not get pay for those goods until their own claims were satisfied. This was the end for which all the elaborate machinery was prepared. To call it anything less than a fraud is to deny the evidence of our own senses. To say that it is not an actual fraud is to blind ourselves to the effect which its accomplishment produced upon those at whom it was directed.

II.

THE PREFERENCES WERE CONSTRUCTIVELY FRAUDULENT AS TO THE RESPONDENTS.

If the facts and circumstances shown by the record establish actual fraud, then upon the principle that the greater includes the less, the preferences were constructively fraudulent as to the respondents; and any consideration of the question of fraud in law, as distinguished from fraud in fact, is unnecessary. However, counsel for petitioners urge upon the court the proposition that the Jaunary arrangement, upon the facts disclosed by the

record, was not even fraudulent *per se*. In other words, the court is asked by counsel to say that the January agreement and the preference thereby secured should be regarded with favor by a court of equity, and upheld as a judicially sanctioned scheme and possibility in business. If the law approves of the transactions in question, and a court of conscience shall say that there is nothing in the conduct of petitioners which should be condemned, then a method has been discovered, or for the first time has been brought into effective operation, whereby, through the form of a corporation and corporate action, results may be contemplated and accomplished which heretofore have been uniformly condemned. To reconcile such a decision on principle with well-established and approved precedents, it would be necessary to resort to no little discriminating casuistry.

In this case there is very great difficulty in discussing the question of fraud in law, as distinguished from the actual fraud disclosed by the evidence, for the reason that the facts bearing upon both questions are concurrent and so intimately commingled and related that they are inseparable. The intent and object is also expressed or confessed, therefore any discussion of either question by taking up one particular fact or transaction after another and considering it by itself, and unrelated to the other facts and transactions involved in the scheme, and the intent and object thereof, as counsel for petitioners have done, must be illogical, faulty and without value to the court, which is called upon to pass judgment upon the legality of the scheme as a whole. For the same reason, any discussion of the preferences apart from the expressed motives and intentions is impossible.

This arrangement between the Rubber Companies and the Fargo company clearly contains the following elements:

First: The Rubber Companies obtained the power to quickly sieze and convert, at their pleasure, or, in case of disaster, all existing and all after-acquired property of the Fargo company, whether tangible or intangible.

Second: The transfer of the corporate power of the Fargo Company to the Rubber Companies, or their agents who were to act in their interest, whereby they could prevent the Fargo Company from preferring any other creditors.

Third: The Rubber Companies were given possession of the corporate powers of the Fargo Company while the Fargos were held out to the world as being in control of the company and its assets.

Fourth: It contemplated that the Fargos were to carry on the usual business of the company, buy goods on credit and sell and appropriate the proceeds as they saw fit until the Rubber Companies elected to appropriate the assets of the Fargo Company to their own demands.

Fifth: The confessed purpose was, not so much to secure a payment of the indebtedness of the Rubber Companies at a definite time, as to erect a barrier generally against all other creditors during the indefinite period allowed to the Fargos to ostensibly manage the business and prevent creditors from obtaining any lien or security at all after the Rubber Companies had appropriated the assets to their own demands.

Sixth: Another essential element, and the confessed purpose, was to keep the whole arrangement and situation

secret in order that the company might obtain goods on credit from third parties who were ignorant of the situation.

The master finds (*Record*, 162) that the various steps taken "were all for the purpose of giving preferential security to the Rubber Companies, and the matter was kept secret in order to allow the Fargo Company an opportunity of getting through embarrassments apparently temporary, but not with a fraudulent intent as to the other creditors of the company. The only purpose and object of changing the board of directors, as aforesaid, and of amending the by-laws was to protect the Rubber Companies against the giving by the Fargo Company of preferential security or judgment notes to other of its creditors which should be superior to the security of the Rubber Companies."

Without stopping here to refer specifically to other facts shown by the record bearing upon the question, for it would involve a repetition of what appears in the brief of our associates for respondents, we maintain that the natural and logical effect of the January arrangement and the conduct of the parties thereunder and in execution thereof, to use the language of the court in *Hilliard* v. *Cagle*, 46 Miss., 309, quoted and approved by this court in *Blennerhasset* v. *Sherman*, was

> "To mislead and deceive the public and induce credit to be given to the mortgagor which he could not have obtained if the truth had been known, and therefore the whole scheme was fraudulent as to subsequent creditors, as much so as if it had been contrived from that motive and for that object."

The authorities cited in the brief of our associates upon this question we do not here repeat, but respectfully refer the court to them in support of our position.

Counsel say: "The contract being legal, it was not only right, but the duty of the Fargo Company to carry it out."

We deny the assumption that the contract was legal. We contend that it was not only not the duty of the Fargo Company to carry out the scheme, but it was its duty, and the duty of its officers and directors, to refrain from its execution, because it was fraudulent. One of the vices of the arrangement was that it was to be kept secret, and was kept secret for the purpose of allowing the Fargo Company an opportunity of getting through its embarrassment by continuing in business in the ordinary way, and obtaining goods on credit and borrowing money from those who were ignorant of the truth. Secrecy, for this purpose, makes the arrangement fraudulent in Illinois, for this is "a fraudulent intent as to other creditors." The elements of secrecy and a dishonest motive are both present in the January arrangement. The contract was illegal and it was not the duty of the Fargo Company to carry out a fraudulent contract.

THE CHANGE OF DIRECTORS AND AMENDMENTS OF THE BY-LAWS.

The master found that the "only purpose and object of changing the board of directors, as aforesaid, and of amending the by-laws was to protect the Rubber Companies against the giving by the Fargo Company a preferential security or judgment notes to other of its creditors which should be superior to the security of the rubber companies."

The draft of agreement (*Record*, 588, 589) between the Rubber Companies and the Fargo Company, which

Mr. Beale (*Record,* 555) testifies expressed precisely his understanding of the agreement at the time, provided as follows:

"The directors and officers elected at the instance of the said Beale shall aid and not interfere with or hamper the proper carrying on of the ordinary and usual business of the Fargo Company, substantially as heretofore carried on, *but they are expected to act as may be necessary to guard and protect the interests of said Johnson and of said two creditor corporations under this agreement.*"

Upon this point Mr. Beale (*Record,* 567) testified as follows: "Q. Then the conversation centered upon the giving of judgment notes, and that did not appear to be to you entirely satisfactory, for the reason that the Fargos might give security to other people which might interfere with your security under the judgment notes. That is true, I suppose? Ans. (Mr. Beale) That is correct also. Q. And, to meet that objection, Mr. Fargo suggested that a board of directors pledged to the Rubber Companies might be put in and thus any action of that kind might be prevented? A. (Mr. Beale) That is correct."

Mr. Beale further testifies (Record, 569): "I assumed that the young men who are in my office had sufficient confidence in me so that, if I had asked them to take any action, so it did not at once offend their moral sensibilities and seem to them to be wrong, they would have done it, relying upon me. I do not question that for a moment."

The facts and circumstances surrounding the appointment of these gentlemen as directors of the Fargo Company and the confessed object and purpose for which they were placed in the directory of the company is so plainly inconsistent with an honest purpose that the law will con-

clusively presume a fraudulent intent. It constitutes almost conclusive evidence of fraud and bad faith. Having for its object and purpose deceit upon subsequently drawn in creditors and the warding off, hindering and delaying of creditors, it cannot be said to have been made in good faith and without fraud. The placing of men in the directory representing interests hostile to the company is illegal, for the reason that they cannot serve both interests, the interests of the company and the interests of their clients, the Rubber Companies. We have no doubt that such a change of directors as this case presents is in itself fraudulent and is in itself an evidence of fraud of the highest character. The directors nominated by counsel for the Rubber Companies had no interest in the company, had no interest in its business, had no knowledge or experience necessary to make them fit persons for directors. They were not put there for any legitimate or legal purpose. They were put there with the express understanding and instruction that they were to act in the interests of the Rubber Companies and would devote no time and attention to the interests of the Fargo Company. The by-laws were amended so as to make their power over the company more complete, and the power of the general officers of the company was limited to the merest details of running the business in the ordinary course of trade. This change of directors was a means to a fraudulent end.

It does not relieve the situation or change in any manner the legal effect of the change of directors and the amendment of the by-laws to say that it was done "solely for the purpose of assuring the performance of this agreement," when the agreement expressed an illegal purpose

on its face. Wholly apart from such expressed and confessed purpose, the change of directors and by-laws was fraudulent in law, because it carries with it the implied and irresistible inference that it was for the purpose of having a board of directors pledged to the interests of the Rubber Companies and that the change of by-laws, in connection with all the other facts, would have no other purpose nor effect than to hinder and delay creditors existing or subsequently drawn in.

Counsel for petitioners ask (*Brief*, p. 40) what right of creditors is here infringed? We answer: the right that their debtor shall at all times be free to treat them justly and to do everything in his power to pay or secure their debts; that he shall not be bound hand and foot by any other creditor or creditors who hold secret liens or the secret machinery for acquiring liens upon the goods and property sold by them to the debtor on credit in ignorance of his position and condition. As "the right to prefer is based upon *jus disponendi*, which the owner of property retains so long as his ownership continues," to use the language of respondent's counsel, every creditor has the corresponding right to extend credit, based upon the assumption that the debtor still retains his *jus disponendi* until it has been exercised in some way known to the law and evidenced by public record or a change of possession. The change of directors and of by-laws in fact and by design deprived the Fargo Company of this right, and necessarily and expressly contemplated that, after it was so deprived of this right, secretly and by no recognized form of legal security, it should continue its business in the usual way by purchasing goods on credit and borrowing money. Thus the rights of such of the cred-

itors who were kept in ignorance of the change of directors and of the by-laws were infringed, and therefore the law condemns the scheme. True, the debtor may always exercise his discretion as to this power to prefer, but he cannot secretly submit to a restriction upon it or a total surrender of it in the manner and for the purpose here contemplated.

Experience has demonstrated that human nature, whether in its corporate capacity or its natural state, cannot be relied upon to do justice under all circumstances; hence the appeal of counsel to human nature as a basis or guide or safeguard to just corporate action is, to say the least, unsatisfactory and doubtful. And this case furnishes an example of what human nature can be expected to do under stress of circumstances.

THE PREFERENCE OF THE METROPOLITAN BANK WAS FRAUDULENT IN LAW.

The manner in which the bank became a party to the January preference is shown by the testimony of Mr. Charles E. Fargo and Mr. Keith (Record, 190, 192, 385, 389) and by the action of the directors and stockholders of the Fargo Company (Record, 67, 69) and the written agreement between the Rubber Companies and the Bank (Record, 385).

From this it appears without question or controversy that (1) the loan of the $10,000 for the private use of the Fargos by the Bank, (2) the giving to the Bank of the two judgment notes of $25,000 each, (3) the agreement between the Bank and the Rubber Companies and the Fargo Company, and (4) the acceptance by the Bank of the Fargo Company's

factory property at Dixon, Illinois, in payment of one of the notes, were all parts of the transaction, which professedly involved (5) the failure and wrecking of the Fargo Company, and (6) the seizure of all its assets, including the property secured and acquired by the Fargo Company while operating under the January agreement, and (7) the appropriation of everything to the demands of the Rubber Companies and the Bank, *pro rata*, under the machinery provided by that scheme.

The purpose for which the Bank loaned the $10,000, and the use to be made of it by the Fargo Company, or the Fargo brothers, is shown by the testimony above referred to. The money was not to be, and was not, as a matter of fact, used for any legal corporate purpose in carrying on the business of the company, for that business was to be suspended at once. It was to be used by three stockholders, two of whom were directors of this insolvent company then in the final act of failure, for their own private use and benefit. In other words, the Fargos used their power as officers of the company to convert its assets to their own benefit when they were trustees for the creditors, and the Rubber Companies, and the Bank actively assisted them in so doing, with full knowledge of all the facts and the illegal purpose.

That this was an unlawful preference admits of no argument beyond a statement of the facts. That it vitiates and makes illegal the preference to the Bank which was created wholly or in part in consideration thereof does not seem to admit of argument before this court at this period in the history of corporate jurisprudence. Many questions have been settled, and this one among others.

As to the effect upon the preferences to the Bank pro-

duced by its becoming a party to the original January scheme, which was thereby made an essential part of the preference, we need only to say that, if the original scheme was fraudulent, the preference to the bank which became a part of it was necessarily fraudulent. For courts will not make new contracts for parties by striking out the illegal parts of contracts and giving effect to the other portions. If fraudulent in part, the contract as a whole is saturated with the fraud and, consequently, is illegal.

This leads us again to the question as to whether the original January scheme was fraudulent. Upon that question we respectfully refer the court to what we have already said in discussing it and to the brief of our associates upon the same point.

III.

SHALL THE PETITIONERS BE ALLOWED TO PRO-RATE WITH RESPONDENTS IN THE $104,000 NOW IN THE HANDS OF THE RECEIVER, REALIZED FROM THE SALE OF RESPONDENTS' GOODS?

Every case must be decided upon the facts shown in that particular case, and we respectfully submit that under the peculiar facts shown in this case, the claims of the petitioners should be postponed to the claims of respondents. An entirely new scheme has been devised by the counsel for petitioners to confiscate all the assets of an insolvent corporation and still permit it to continue in business and defraud its creditors. The decision of this court on the questions involved is of vital importance to the commercial world.

The peculiar facts regarding the scheme of the petitioners is as follows:

During five or six days in January, 1896, Johnson and Sadler, as representatives of the U. S. Rubber Co., and L. Candee & Co., with full knowledge of the insolvency of C. H. Fargo Co., endeavored to get a preference for these Rubber Companies over other creditors of the Fargo Company, but were at first unable to do so.

The U. S. Rubber Company then held $140,000 overdue indebtedness (Rec., 289) against the Fargo Company, and L. Candee & Co. held its notes for $44,900, then about to mature, given for an indebtedness which matured on May 1, 1895 (Rec., 514), and there was then a contest between the Rubber Companies and Fargo Co. as to whether or not about $100,000 worth of rubber goods then on hand were consigned or sold to Fargo & Co. At first these representatives tried to get a chattel mortgage which the Fargo Co. refused to give, because placing it on record would ruin their credit, it being then their desire to continue the business long enough to get some money for themselves, and to have the company take up some of its notes then outstanding on which they were individually liable as indorsers. Next Johnson asked for demand judgment notes and these the Fargos refused to give, unless Johnson would advance sufficient money to carry the Fargo Company along a few months longer. Johnson (Rec., 511) says that it was not until after Fargo told him in effect that unless he advanced additional money they would make an assignment and treat all of their creditors alike, that he decided to make the advance.

Being thwarted in the scheme to get a preference on their claims, then amounting to $184,900, and there being

a contest over $100,000 worth of goods claimed by Johnson to have been consigned and not sold to the Fargo Co., Johnson deemed it best to advance $50,000 and increase the debt to $234,900, *provided* this larger sum could be *absolutely secured beyond all question.* In doing this, if the scheme then under consideration succeeded, he would accomplish what he came to Chicago for, namely, to get security for the debt of $184,900—$140,000 to U. S. Rubber Company and $44,900 to Candee & Co.—Johnson then knew that if an assignment was made, as threatened by Fargo, that the Fargo Co. assets would not pay over twenty-five cents on the dollar to its creditors, and that on the claim of $184,900, which he represented, the Rubber Company would get only about $37,000, and with such a result staring him in the face, the fraudulent scheme, of which we complain, was concocted and carried through between Fargo, Johnson, Sadler and Beale—Fargo was agreeable to any plan which would result in carrying the business along until the $15,000 of notes endorsed by him and his brothers could be paid off. Johnson was willing to do anything that Beale said would be absolutely safe, and thereupon Beale prepared an agreement in writing to be signed by the Fargo Co. providing as follows (words in brackets are ours):

"*First.* Said Johnson will advance, *or cause to be advanced,* to the Fargo Co. the sum of $50,000, of which sum there shall be furnished $10,000 on the date hereof; $10,000 on or before January 10, 1896; $10,000 on or before January 16, 1896, and the remaining $10,000 on or before January 20, 1896; which said advance of $50,000 *shall be used by the Fargo Co. to reduce the amount of its indebtedness as it matures* (meaning the L. Candee & Co. notes then maturing). For the re-payment of said

$50,000 to be advanced in installments as aforesaid, the Fargo Co. *shall this day*, Jan. 6, 1896, give its several promissory notes to L. Candee & Co., aggregating that amount, *which said notes the said Candee & Co. intends to indorse and discount for the purpose of obtaining said sum so to be advanced.*

"*Second.* The Fargo Co. *shall on this date* also execute and deliver its three judgment notes as follows: One note for $140,000, payable to the United States Rubber Co. to secure the said indebtedness to that company—one note for $45,000, payable to L. Candee & Co. to protect and secure that company against its liability upon the discounted notes of the Fargo Co. heretofore given in the sum of $44,900, and one note for $51,500, payable to L. Candee & Co. as further security to that company for $50,000, herein agreed to be advanced to the Fargo Co. as aforesaid, and interest thereon, and to protect and secure said L. Candee & Co. against its liability upon the plain promissory notes evidencing such advance, *which it is the purpose of said L. Candee & Co. to endorse and discount—each of said judgment notes to be payable on demand* and to bear interest at six per cent. per annum.

"*Third. The Fargo Company*, to further secure said *indebtedness hereby assigns and transfers to said Johnson all such book accounts, credits*, bills receivable and choses in action as shall be owned by, or due to it whenever judgment shall be entered on said judgment notes or either of them. * * *

"*Fourth.* The board of directors of the Fargo Co. shall be at once reorganized so that of seven directors there shall be five new ones nominated by or acceptable to Wm. G. Beale, of counsel for said Johnson. Chas. E.

Fargo, one of the present directors, shall remain president of the Fargo Co. as heretofore, and the offices of secretary and treasurer shall be filled by a director or by directors so to be placed in the board at the instance of said Beale. Such directors or their successors elected likewise at the instance of said Beale shall retain their places in said board as long as desired by said Beale, or until they shall resign under the provisions of this agreement.

"*Fifth.* * * * Any one of the following specified contingencies shall at the election of said Johnson justify the confession of judgment upon said notes prior to July 1, 1896, that is to say:

a. The execution, except as herein provided, in the name of the Fargo Company, by any of its officers or directors, not elected at the instance of said Beale, *of any judgment note, or of any warrant of attorney for the confession of a judgment upon a note or account or other liability.*

b. The execution in the name of the Fargo Co. by any of its directors or officers not elected at the instance of said Beale, of any mortgage or assignment or other instrument designed and adapted to create any lien or security upon any property or assets of the Fargo Co. in favor of any existing OR FUTURE CREDITOR OF THE FARGO CO.

c. The institution or progress of any suit or legal proceeding against the Fargo Company, so as to render probable or imminent the issuance of an execution against the Fargo Company, or the establishment of an attachment or other lien upon its property or assets beyond the seeming ability of the Fargo Company to promptly pay the amount of such execution or lien.

"*Sixth.* * * * *The directors and officers elected at*

the instance of the said Beale shall aid and not interfere with or hamper the proper carrying on of the ordinary and usual business of the Fargo Company substantially as heretofore carried on, but they are expected to act as may be necessary to guard and protect the interests of said Johnson and of said two creditor corporations under this agreement.

"*Eighth. The Fargo Company shall at once open and shall hereafter keep separate sets of books* to show fully the business done by it under its consignment contract with the United States Rubber Company, in order to keep, as required by said contracts, the accounts of said consignment business and money of said Rubber Company *at all times separate and distinct*, so far as possible, from the accounts and moneys of the Fargo Company. * * *"

Regarding this agreement Mr. Beale testified as follows (Rec., 555):

"Although not signed, that written draft of agreement represented what was agreed to, and what was sought to be done between the companies in the January arrangement." On January 7, 1896, when Beale showed Fargo a telegram from Johnson reading as follows:

"I think position should be made absolute soon as possible, by completing agreement as arranged, and organization of board of directors to prevent giving other judgment notes—this before we make further money advance—failure to thus protect us, should result in executions by us. Use at your discretion all judgment notes in your possession in order to put our claim beyond peradventure."

Fargo at once saw that Johnson had out-generaled him

by getting possession of Fargo & Company's judgment notes payable on demand, and immediately agreed with Beale that he would waive the conditions, under which judgments might be entered on said notes before then exacted by him, and leave the matter entirely in the discretion of the Rubber Companies (p., 438), and Johnson, as to when judgments should be entered on the notes.

The next step in the scheme, was to have the directors and stockholders of the Fargo Company convene and pass a resolution, "that *whenever it shall be found necessary for this company to suspend business,* it will then assign and transfer to said Johnson for said Rubber Company (U. S. Rubber Company and L. Candee & Co.), all such book accounts, credits, bills receivable and choses in action as shall be then owned by or due to this company."

Then Beale required the Fargo Company to execute and deliver to him its five plain notes for $10,000 each, and one judgment note for $51,500 payable on demand as consideration for the $50,000 which Johnson proposed to advance. Also another judgment note for $45,000 payable on demand, to secure L. Candee & Co. as guarantors on the $44,900 of notes previously given, which Johnson claimed had been discounted at eastern banks, and also another judgment note for $140,000 payable on demand to the U. S. Rubber Company for its claim making, in all plain and judgment notes of the Fargo Company in the possession of Beale as follows:

To L. Candee & Co. (Plain notes)	$ 44,900
To L. Candee & Co. (Plain notes)	50,000
To L. Candee & Co. (Judgment notes)	45,000
To L. Candee & Co. (Judgment notes)	51,500
To U. S. Rubber Co. (Judgment notes)	140,000
Making a total of	$331,400

Thus for debts owing L. Candee & Co. and U. S. Rubber Company, amounting to $234,900, including the promised advance, Fargo & Company gave notes to the amount of $331,400, and of this sum $236,500 *was in judgment notes,* payable on demand. On January 8, 1896, Beale required a meeting of the stockholders of the Fargo Company to be held, when he further insisted that Gilbert E. Porter, George C. Madison, Tiffany Blake, Buell McKeever and Frederick B. Fuller, clerks in his office, should be elected directors of Fargo & Company. On January 9, 1896, this new board of directors of the Fargo Company elected Charles E. Fargo, president, Frank M. Fargo, vice-president and Buell McKeever, its secretary and treasurer, and then on motion of Mr. Porter in compliance with the prearranged plan, the by-laws were amended so as to withdraw from the officers the power of giving any judgment note, chattel mortgage or lien of any kind, except on special authority from the board.

THE TWO RUBBER COMPANIES IN COMPLETE CONTROL OF C. H. FARGO & COMPANY, ON AND AFTER JANUARY 9, 1896.

The two Rubber Companies being on and after January 9, 1896, in absolute control of the Fargo Company, the next and most important step to be taken by the new combination, was that the Fargo Company should go on with its business and buy goods and materials on credit, out of which, in the interest of the Rubber Companies to raise money sufficient to pay the Candee & Co. and United States Rubber Company's notes as they matured, and in the interest of the three Fargos, to pay off the Fargo Company's notes on which they were individually

liable as guarantors, and to be able to keep all creditors from whom they were to buy goods in ignorance of the trap which had been laid for them.

Between January 9, and August 6, 1896, C. H. Fargo & Company, while under the control of the United States Rubber Company, purchased goods and borrowed money on credit from 167 different creditors, who have proved their claims in this case (Rec., 137 to 141), amounting to $180,038.63.

SCHEME TO DECEIVE CREDITORS BY USING OLD LETTERHEADS OF C. H. FARGO & COMPANY.

Although on January 9, 1896, Buell McKeever, by Beale's direction, had been elected secretary and treasurer of the Fargo Company, it was decided, in furtherance of the secret scheme which had been arranged, to use in the conduct of their business and in ordering goods the old letterheads of C. H. Fargo & Company, on which it was printed as follows:

"Chas. E. Fargo, Prest.
Factory, Dixon, Ill.

Frank M. Fargo,
V. P. & Treas.

Edward A. Fargo,
Secretary.

C. H. FARGO & CO.,

MANUFACTURERS OF BOOTS AND SHOES,
196-198-200 MARKET STREET, CHICAGO."

And it is admitted in the record that no other or different letterheads were used by the Fargo Company in carrying on its business after January 9, 1896, and it is shown by the record that the respondents received hun-

dreds of orders for goods from the Fargo Company written on these letterheads.

Thus equipped, the Fargo Company secretly run by the representatives of the Rubber Companies, went to the Dixon Banks to borrow money, and in the markets east, west and everywhere to buy large quantities of merchandise, leather and findings, on credit with which to run their store in Chicago and their factory at Dixon. Not a dollar in money was provided in the January scheme with which to buy these items, without which, the factory could not run or the stock of goods in Chicago be replenished. Judge Grosscup said in his first opinion:

> "The arrangement under consideration is, in its practical aspects, an effectual, secret lien upon a stock of goods in trade under circumstances that justify the trading world into giving security to which the trader is not entitled. There is no name in the vocabulary of the law, so far as I know, exactly fitting it. It is an arrangement possible only to a corporation. An individual trader cannot so divide himself that one personally conducts the business and receives the proceeds, and another holds exclusively the reins of power. An individual can, by no arrangement except a lawfully executed mortgage, debar himself from doing as he pleased with that which is his own and acting as he pleases toward those to whom he is under obligations. With an individual, in contemplation of law, the right-hand always knoweth what the left-hand is doing. But here is presented a case where the actual personality of the trader is one intellect or set of intellects, and the power-holding personality another. The Fargos conduct the business, receive the proceeds, and appear to the world as the dominating will of the concern. The young men in the office of the favored creditors' counsel, held all the powers of action. The Fargos were the corporation of C. H. Fargo & Company, as the world knew and dealt

with it, but were as helpless as their neighbor across the street, as the law technically knew and dealt with it. The device under consideration, so cleverly dealt with the corporation, that while the personality of the Fargos stood out as the controlling power and would, in fact, have obtained the benefits of success, an invisible barrier in control of the favored creditors made them impregnable, not only to attack, but helpless against appeal to their sense of justice by other creditors. The device accomplished for the Fargos and the favored creditors, all that a secret chattel mortgage with possession and power of sale remaining in the mortgagor, could have accomplished, and must, therefore, be treated, in equity upon all considerations of justice and reason, as such a mortgage would be treated."

Judge Woods, in his opinion (Rec., 725), says:

"The scheme adopted, which, if upheld, though not constituting a recognized form of lien, would be a better security than a chattel mortgage, was accepted not only because it made secrecy possible, but because it made exposure impossible, if those employed to execute it kept faith; and that every one of them understood, or was made to understand, that once the scheme was on foot his chief responsibility would be to maintain a discreet silence, the proof is clear, and there has been no attempt or apparent disposition to deny. * * *

"Whatever may be thought of the legislative policy which permits the execution and long holding of unrecorded judgment notes, the decisions cited afford no precedent, direct or inferential, in justification of the scheme in question, the like of which, we believe, if ever conceived, never before was brought into effective operation. As a judically sanctioned or commercially accepted possibility in business, it is unbelievable. It could be attempted only by a corporate debtor, and its approval by the courts would afford a new and fruitful motive for the creation of corporations by the many who would

be quick to avail themselves of so promising a method of pursuing hazardous enterprises at the risk of others."

Mr. Beale evidently did not have any great amount of confidence in his new preferential method, for he says Rec., 564), that he advised Charles Fargo not to increase the Fargo & Company's indebtedness at the Metropolitan Bank after the January arrangement, and that it would not be safe to put the Metropolitan Bank in a position where it could claim to have been deceived. He must have been willing to take chances of deceiving respondents and other merchandise creditors, for he had them in mind when he drew the agreement in January. In that agreement, it was expressly provided, that if any director or officer of the Fargo Company executed, "any instrument designed and adapted to create any lien or security upon any property or assets of the Fargo Company in favor of any existing *or future creditors* of the Fargo Company," judgments by confession might, at the election of Johnson, be entered on the judgment notes taken by the Rubber Companies.

Inasmuch as no more shoes could be manufactured at the Dixon factory without purchases of leather and findings being made by Fargo & Co., it is hardly to be believed that the way and manner in which this stock was to be obtained was not thought of; but, on the contrary, the mind is forced to believe that this phase of the situation was discussed, and it is fair to presume that the largely increased purchases made by the Fargo Co. from American Oak Leather Company, Pfister & Vogel Leather Company, Eagle Tanning Works, Wilder & Co. and others were made in pursuance of a plan which was devised and discussed during the January negotiations.

Judges Woods and Jenkins in their opinion in the Court of Appeals say: "The inventors of the scheme were bound to apprehend its probable consequences."

Petitioners' counsel now pretend that the $50,000 was advanced by Johnson to put the Fargo Co. upon its feet again and that this assistance was rendered to tide them over a temporary embarrassment. This theory, we insist, is an afterthought, for it is conclusively shown that this $50,000 was advanced in amounts and on about the days when the $44,900 notes due L. Candee & Co. matured and the money advanced could be used for no other purpose than paying the notes as they matured. Did this advance put the company on its feet again when Johnson, for the U. S. Rubber Company, demanded and took its demand judgment note for $140,000? What firm or corporation could be said to be in a safe financial condition with an outstanding demand judgment note for $140,000? Had Johnson, in fact, been desirous of putting the company in a condition to continue its business, he would have granted it an extension on its plain notes without interest for the $44,900, owing Candee & Co. and also for the $140,000 owing U. S. Rubber Co., and a further line of credit for such goods as were needed to replenish the stock and allowed it to advise other creditors of such action. Will any sane man believe for a moment that at the conclusion of this fraudulent January scheme, when Fargo & Co. was bound hand and foot by the Rubber Companies, with a gag in the mouth of every one connected with the establishment; with $236,500 of its demand judgment notes outstanding and in the hands of Beale; with five of its seven directors ready at the bidding of Beale to assign and transfer to the Rubber Companies all of its outstanding accounts and assets of every

name and nature, that its embarrassment was only temporary? Is it not the more probable that the Rubber Companies, feeling themselves to be secure in any event, let the Fargos proceed about as they saw fit and pay off the company's notes on which the brothers were individually liable, and is it not true that such notes were paid before April 1, 1896? What becomes of the petitioners' claim that they regarded the embarrassment of the Fargo Co. as only temporary, when we read from Mr. Beale's letter of May 5, 1896, to U. S. Rubber Co.: "There is only one thing about which I wish to caution you in this connection, and that is, *not to let the Fargo indebtedness increase*, because any such increase would not be protected by the judgment notes."

At the time Mr. Beale wrote this letter Fargo & Co. was increasing its indebtedness, three, four and fivefold to American Oak Leather Company, Pfister & Vogel Leather Company, Eagle Tanning Works, Wilder & Co., and others.

Is it not a significant fact that during June and July, 1896, while Charles Fargo was asking extensions from the Pfister & Vogel Leather Company, and the American Oak Leather Company, and was falsely stating to Mr. Vogel that Fargo & Co. had no outstanding judgment notes and that no creditor had any preferences, Fargo & Co. paid to the U. S. Rubber Company three payments of $5,000 each? (Rec., 596.)

If there was no collusion between Charles Fargo and Mr. Beale, why should Fargo on July 15, 1896, and again at a later date, go to him and tell him about a $10,000 note coming due on July 21st, and another on August 2d, at Metropolitan National Bank, and why should Mr.

Beale wire U. S. Rubber Company, "Extension may be refused (by the bank); Fargo promises to keep me informed, so that, if necessary, judgments can be entered on our judgment notes"?

Why should Mr. Beale advise Charles Fargo how to avoid embarrassing questions that Mr. Keith might put to him?

Is there room for doubt that from first to last Mr. Beale as a lawyer advised Charles Fargo regarding the course he should pursue at all times after making the secret January arrangement with him? At the very outset, Mr. Beale advised Fargo that it would not be safe for him to increase the Fargo & Co. indebtedness to the Metropolitan National Bank. Would he give such advice and leave Fargo in the dark as to how he should proceed with the Dixon Banks and the Merchandise creditors?

Is it not apparent from this record that the design and the only design of the January scheme was to secretly secure the L. Candee & Co. and the U. S. Rubber Company claims at the expense of other innocent and purposely deceived creditors?

Judge Grosscup, in his opinion, says (Rec., 83, 84):

> "The (January) arrangement was not intended to provide means to pay the debt, but solely to provide a legal equipment whereby the entire assets could be quickly seized, in case of disaster, and other creditors be prevented from obtaining a like advantage."

Why did Charles Fargo consult with Mr. Porter, in Mr. Beale's absence before deciding upon his deep-laid plot to get an additional $10,000 out of the Metropolitan Bank for the private use of himself and his brothers?

Fargo says (Rec., 189, 190): "That on August 5,

1896, the Fargo Co. had a note mature, for about $5,000, which they supposed was not due until the 13th; that he saw Porter about it and then telegraphed the parties for an extension, but getting no reply, the note was protested."

In this connection it is worthy of comment that no creditor has made proof in this case of a note for said sum maturing and protested on that day, and it is no more than fair to assume that the failure of Fargo & Co. on that particular day was brought about by Charles Fargo because he was ready for the crash: for this is the day when Fargo, with the assent of the Rubber Companies, went to the Metropolitan Bank and told Mr. Keith of the secret January arrangement; of the giving of the judgment notes to the Rubber Company for over $200,000, of the change in the board of directors and that Fargo & Co. was going to fail, and the Rubber Companies were going to enter up their judgments at once, and that if his bank would advance an additional $10,000 for himself and his brothers and make its claim $50,000, instead of $40,000 (Rec., 192), that he would give the bank judgment notes and see that it was let into the secret January arrangement on an equal footing with the Rubber Companies.

Judges Woods and Jenkins in their opinion say:

> "Questions of fraud in law and fraud in fact are, in their natures separate, though not always distinguishable by clearly defined lines."

If, on January 9, 1896, Fargo had not assented to the requirements of Johnson in his telegram to Beale, judgments by confession would have been entered on that day and the doors of the Fargo house closed. If by chance

knowledge of the secret scheme had leaked out and come to the ears of the creditors with whom the Fargo Co. had formerly dealt, before they had extended further credit, no leather could have been obtained on credit with which to run the Dixon factory, and the crash would have come at once and there would have been *no future creditor* as contemplated by Beale, and the provision regarding them in the agreement he drew would have availed nothing.

Charles and Frank Fargo were the sentinels constantly on duty, making almost daily reports to Beale. When there was the least intimation of danger ahead, when any creditor refused to grant an extension to Fargo as asked for, when the notes to the Metropolitan Bank were about to mature, and there was even a doubt as to whether or not they would be renewed, Charles Fargo, always on the alert lest the January bubble would burst, rushed to Beale with all the information he possessed, and then new kinds of devices were resorted to to ward off the threatened danger. Suppose early in February, 1896, within a month after the January scheme had been put in motion, that the Dixon Banks had learned that Frank Fargo had deliberately lied to them about the financial situation of the Fargo Co. and had refused his application for a loan. Is it not probable that such refusal would have been reported to Beale and would they not have decided then that their proposed scheme to rope in innocent creditors was a failure? In which case Beale would then have closed the Fargo establishment with executions issued on the confessed judgments in favor of the Rubber Companies and the Fargo Brothers would have been unable to fill their pockets beside redeeming their $15,000 of notes.

Inasmuch as Charles Fargo promptly told Beale in July that there was doubt about the Metropolitan Bank granting further extension, may we not assume that he also reported the danger he was in from Pfister & Vogel, and then later the success of the deception he had practiced on them. Suppose at any time during the spring of 1896, the Pfister & Vogel Co. had learned of the fraudulent and secret January scheme, and what five of the seven Fargo & Co. directors were placed on that board for, does any one doubt that the Pfister & Vogel Co. could on account of the deception practiced on them, have maintained replevin for such of their goods as were in the possession of the Fargo Co. when suit was brought? If so, then why may they not now be entitled to their pro rata share of the fund now in the receiver's hands, realized by the marshal from the sale of such goods?

Mr. Justice Brown, in his dissenting opinion, says:

> "The district judge (Grosscup) was of opinion that, although the giving of the judgment notes was unlawful, the arrangement by which the matter was kept secret while the corporation divested itself of power to give like notes to other creditors, and continued to carry on its business as before, rendered the whole device a constructive fraud upon its creditors. In this we all agree."

The three judges of the Court of Appeals and the district judge all agree that a fraud was perpetrated on respondents by the petitioners and they differ only as to the kind, quality or degree of the fraud committed. Is it not inequitable for a chancellor with such a record as is here presented to attempt to make such a qualification of the fraud as will permit the perpetrators of it to share with the defrauded respondents to the same extent they would have done if no fraud had been committed?

The petitioners on August 6, 1896, when they levied their executions on the Fargo & Co. stock of merchandise made no levy on the $100,000 worth of rubber goods then on hand, but without any objection from the Fargos, removed them, as though they were all of them consigned goods. It seems an injustice—outside of the fraud disclosed—that the Rubber Companies should be allowed to take back the goods they had shipped to the Fargo Co. and then levy on the goods which had been bought on credit from these respondents and others: and now the proceeds of such goods being in the hands of the receiver, we insist that it should be distributed among the respondents and other defrauded creditors from whom the goods were purchased.

If a creditor obtains a preference for the purpose of aiding his debtor to hinder and delay other creditors and for the purpose of getting security for himself, the act of preference will be regarded as fraudulent and void.

Huiskamp v. *Wagon Co.*, 121 U. S., 310.
Young v. *Clapp*, 147 Ill., 176.
Merry v. *Bostwick*, 13 Ill., 398.

In *Strohm* v. *Hayes*, 70 Ill., 41, it is held that

> "if a chattel mortgage is executed, not alone to secure an indebtedness to the mortgagee, but to protect the property of the mortgagor, and to hinder and delay his creditors, and this fact is known at the time by the mortgagee, the mortgage will be void as to the creditors attempted to be defrauded."

In *Beidler* v. *Crane*, 135 Ill., 92, it is held that,

> "although an assignment of a property right be made upon a valuable and ample consideration, without any intention to defraud any one, *yet if there be a secret trust* reserved, not disclosed by the writing, the law will treat the transaction as lacking the element of good faith, and conclusively infer fraud."

In *Phelps* v. *Curts*, 80 Ill., at p. 113, it is said:

> "A debtor, in failing circumstances, is only allowed to place his property beyond the reach of his creditors by making a general assignment of it, when he does so for the benefit of the creditors, by devoting it unreservedly to the payment of his debts, *and not with a view to his advantage* in delaying until a favorable time the appropriation of the property for such purpose."

The United States Rubber Company and L. Candee & Co. devised the January scheme, and put the Fargo Company in a position to defraud the respondents, and under the maxim that, HE WHO GAVE THE POWER TO DO THE WRONG MUST BEAR THE BURDEN OF THE CONSEQUENCES, the petitioners must make good the loss to respondents before they can participate in the fraud in controversy.

The United States Rubber Company and L. Candee & Co., had complete control over five out of the seven directors of the Fargo Company, and at all times after January 9, 1896, had absolute control of Fargo & Company's business, and it was the duty of these Rubber Companies in making purchases from respondents, on the credit of the Fargo Company, to disclose to them the true situation. Fraud may consist, as well in a *suppressio veri*, as in a *suggestio falsi*.

In *Lockridge* v. *Foster*, 4 Seam. (5 Ill.), at p. 573, the court say:

> "The contracting parties are bound to deal honestly, and act in good faith with each other. There should be a reciprocity of candor and fairness. Both should have equal knowledge concerning the subject-matter of the contract; especially ought all the facts and circumstances which are likely to influence their action, to be made known? If they have not mutally this knowledge, nor the same means of ob-

> taining it, it is incumbent on the one having the superior information, to disclose it to the other; he is bound to act in good faith, and with a strict regard to truth. If he makes false representations respecting material facts, or intentionally conceals or suppresses them, he acts fraudulently."

Where the direct and unavoidable consequence of A's act is to deceive and injure B, the law will infer an intent by A to produce that result, and this concurrence of intent and act constitutes fraud in fact upon the part of A.

In the case at bar, the unavoidable result of continuing the business of Fargo & Company after making the January arrangement, was to injure the respondents and all other creditors from whom Fargo & Company bought goods on credit. And, therefore, the law presumes that the Rubber Companies intended to commit the wrongful act.

The master and all the judges who have passed on this case, unite in condemning the transaction, as one of at least constructive fraud. And the main reason for this conclusion is, that the transaction necessarily involved, in whatever light it is viewed, a substantial deceit upon the future creditors. The logical result of this, requires a distribution of the fraud to those whose property the fund represents, before those whose acts caused them to sell the goods receive any share. To hold otherwise is to say, that courts of equity recognize the *right* of a person to obtain, by constructive fraud, goods out of which to obtain a dividend on equal terms with the person defrauded.

Whether the fraud be regarded as actual or constructive, the equities of the creditors entitle them to the pri-

ority of payment which the decision of the Court of Appeals awards.

It is a well known fact, that dishonest debtors, when about to fail, resort to many questionable devices to save something for themselves from their assets; and it is also true, that there is a class of creditors who, for the purpose of getting for themselves a preference over other creditors, resort to various questionable methods. Whenever a decision is rendered by this court, which in any way relates to the rights of failing debtors to secure favored creditors, it is carefully examined, and ingenious counsel are employed to devise new schemes for preferences which will be within the bounds of all previous decisions. And so we say, as do the majority of the Court of Appeals in the case at bar, that if this new and startling method of obtaining preferences is approved by this court, there will "be a new and fruitful motive for the creation of corporations by the many, who would be quick to avail themselves of so promising a method of pursuing hazardous enterprises at the risk of others."

Respectfully submitted.

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No. 150.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1900.

No. 150.

UNITED STATES RUBBER COMPANY, et al.
PETITIONERS.

vs.

AMERICAN OAK LEATHER COMPANY et al.,
RESPONDENTS.

Certiorari to Circuit Court of Appeals for Seventh Circuit

Brief and Argument for The American Oak Leather Company et al., Respondents.

JACOB NEWMAN,
GEORGE W. NORTHRUP,
S. O. LEVINSON and
BENJ. V. BECKER,
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Geo. Hornstein Co., Printers, Chicago.

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Brief and Argument for The American Oak Leather Company et al., Respondents.

Respondents, as creditors of the Fargo Company, filed their bill in the United States Circuit Court on September 11, 1896, charging the Petitioners, among other things, with having obtained possession and control of all the property of the Fargo Company by grossly fraudulent means, and praying that they be decreed to deliver the same to a receiver for the benefit of Respondents and the other *bona fide* creditors of the Company. The court appointed a receiver, who took, and now holds possession of said property, amounting to about $115,000. On the final hearing the Circuit Court decreed, that the Petitioners were guilty of *constructive fraud*, set aside their preferences, and directed the fund in the hands of the receiver to be distributed *pro rata* among

all the creditors of the Fargo Company, including both Petitioners and Respondents. (Rec., 639.)

Petitioners appealed from this decree to the Circuit Court of Appeals, on the ground that they had *not been guilty of any fraud whatever*, and were entitled to keep and hold all their preferences. The Respondents took their cross appeal from this decree to the same court, on the ground that Petitioners had been *guilty of actual fraud*, and were, therefore, not entitled to share in the funds in the hands of the receiver. The Court of Appeals found Petitioners *guilty of actual fraud*, and excluded them from sharing in said fund.

The United States Rubber Company and its co-petitioners filed their petition in this court for a writ of *certiorari* to the October term, 1899; the writ was granted, and this cause comes to this court by means of said writ.

Respondents are satisfied with the action of the Court of Appeals, and therefore, have no error to assign, or cause to complain. The opinion of that court will be found at large on page 717 of the record in this cause. Two federal judges (Grosscup and Mr. Justice Brown of this court) found Petitioners guilty of *constructive fraud*; the Circuit Court of Appeals (Woods and Jenkins), found the Petitioners guilty of *actual fraud*, but Mr. Justice Brown dissented, on the ground that in his judgment, Petitioners had been guilty of only *constructive fraud*.

Respondents contend that Petitioners were guilty of actual fraud, while Petitioners insist that they were guilty of neither *constructive*, nor *actual fraud*. Such are the questions presented by this record.

Master's Report.

The Circuit Court approved the Master's report, finding the Petitioners guilty of *constructive fraud*. Opposing counsel in their brief (p. 14), insist that the Master's report must be taken as "presumptively correct." Under the facts in this record, we challenge the correctness of this contention, because there is substantially no conflict in the evidence, and the Master was not called on to reconcile conflicting testimony. In short, the Master's report is nothing but a *condensed statement of so much of the undisputed testimony as he deemed to be material to his view of the case.*

In this brief, page 92, we show why the Master's report is not to be taken, even in the first instance, as "presumptively correct," and why the court ought to consider the facts in the record *de novo.*

The concrete matters of fact, the acts and doings of the Petitioners themselves and their respective agents, as found by the Master in his report, demonstrate that an *actual fraud*, and not merely a *constructive fraud*, had been perpetrated by the Petitioners upon the Respondents as creditors of the Fargo Company.

The Master has drawn his own inferences from the facts as found by him, and in so doing has wholly ignored the conclusions which the law declares must follow as a logical and inevitable result from the facts themselves. The cases in which this law is stated are discussed at length in this brief. The conclusion of good faith found by the Master is in conflict with his findings as to the concrete facts, and must, therefore, yield to the facts themselves, which conclusively establish bad faith in the Petitioners.

We earnestly contend that the Master in his report has

erroneously stated many, and wholly ignored more, of the controlling facts, and has incorporated in his report *only such facts as he deemed consistent with his theory of the case.* Most of the evidence comes from the lips of the men charged with the fraud itself, and that circumstance is of vital importance when the fraud is disclosed by a long series of complex and involved transactions.

The fraudulent scheme planned and consummated by the Petitioners under which they hoped to pay themselves out of the assets of the Fargo Company and to exclude the Respondents from sharing therein, had its inception in January, 1896. The machinery was then put together by which the assets of the Fargo Company, six months later, were seized by the Rubber Companies and the Bank for the purpose of consummating that scheme.

In order to show the court wherein the Master erred as to the facts found, as well as to the facts ignored by him in his report, it is necessary for us to present a full and detailed statement of the material facts, wrung with difficulty from the Petitioners themselves. These facts and the surrounding circumstances will be presented in their historical order.

Statement.

For many years prior to 1889, C. H. Fargo & Co. was a firm engaged in the business of manufacturing and selling, at wholesale, boots and shoes throughout the Northwest, with its principal place of business at Chicago. In December of that year the firm was incorporated under the laws of Illinois, with a capital stock of $400,000; the corporation assumed the firm name (C. H. Fargo & Co.) and succeeded to the firm's business and carried on the same substantially as if no change had taken place.

In 1892 C. H. Fargo, the founder of the house, died and left the business to his three sons, Charles E., Frank M. and Edward A. Fargo, who controlled and directed the corporation (C. H. Fargo & Co.), and its affairs until the Rubber Companies got control in January, 1896.

The house of C. H. Fargo & Co. had been dealing with the Rubber Companies for nearly a quarter of a century (Rec., 217); their relations had been and were close and intimate, and their business transactions during the greater part of that period reached the enormous figure of $500,000 annually. (Rec., 496.) Charles L. Johnson, the confidential representative of the Rubber Companies, was the close personal friend of Charles E. Fargo, the president of the Fargo Company.

While these relations existed the panic of 1893 occurred. At that time the Fargo Company owed the Rubber Companies $250,000 (Rec., 219) for merchandise, and had in its possession more than $100,000 worth of rubber goods on sale, which had been shipped on consignment by the Rubber Companies; making a total obligation of over $350,000, during that period of commercial distress and disaster.

The Fargo Company likewise owed the Metropolitan National Bank (one of the Petitioners) about $130,000. At the height of the panic of 1893 the Bank became nervous and demanded security in the form of judgment notes; the Fargos then, as they did later in January, 1896, immediately sent for their friend Charles L. Johnson, and laid before him the Bank's demands. Johnson came to Chicago, and after going over the situation, stated that he saw no necessity or occasion for giving judgment notes, and thought it unnecessary and unwise; but the Bank was obstinate and would not be denied. Johnson then said

that if the Bank insisted upon being secured by judgment notes, he felt it to be his duty to take like security for the Rubber Companies, so as to be on an equality with the Bank, but asked nothing more (Rec., 219, 222.) Judgment notes were then given to the Bank and the Rubber Companies, which were, some time in the year 1895, surrendered and plain promissory notes taken for the unpaid balances.

The United States Rubber Company was organized with a capital of $50,000,000 (Rec., 235) in the early part of 1895, and in April of the same year, it obtained control of L. Candee & Co., (one of the Petitioners), and of all the Candee Co's. assets; and thereafter the Candee Co. was merged in and passed under the control of the United States Rubber Company. At this time (April, '95) the Fargo Company owed the Candee Co. upon open account, about $44,900, which it was then unable to pay; this over-due account was closed with the Fargo Company's plain notes, which remained outstanding in January, 1896, when the scheme of which we complain was planned by the Petitioners.

In January, 1896, when this fraudulent scheme was set in motion, the Fargo Company owed the United States Rubber Company (Rec., 289) over $140,000, then past due, and owed the Candee Company $44,900, represented by the plain notes given to close up the old account, past due in April, 1895, which the Fargo Company was then unable to pay, and had also in its possession and mingled with its other stock over $100,000 worth of consigned rubber goods.

THE FARGO COMPANY'S LIABILITIES IN JANUARY, 1896, $436,653.33 AND ITS ASSETS $120,512.44.

The Master finds (Rec., 163) that the liabilities of the Fargo Company were on January 2, 1896, as follows:

United States Rubber Company	$141,537.13
L. Candee & Co. (overdue April, 1895 account)	44,900.00
Metropolitan National Bank	40,000.00
Other creditors	210,216.20
Total	$436,653.33

The actual value of the assets is not disclosed by the record with precise accuracy, but sufficient is shown to enable the court to arrive at substantially correct conclusions.

Assets of the Fargo Company on January 2, 1896.

Stock in Chicago	$ 65,000.00
Stock, fixtures, machinery, etc., at Dixon	12,500.00
Outstanding accounts, etc (Rec. 298, 299)	43,012.44
Total	$120,512.44

The real estate and manufacturing plant at Dixon, Illinois, which was conveyed to the Metropolitan National Bank in August, 1896, was by that institution abandoned as not worth the liens thereon which had ripened into decree and sale. The Petitioners having placed no value upon the Dixon property we therefore do not include the same in the assets.

The foregoing statement of assets shows what the tangible property brought, in September, 1896, at a fair sale, as set out in the answers of the Rubber Companies and the Bank

Rec., 50–60, 117), and established by the testimony of the witnesses. Charles E. Fargo states (and he is uncontradicted) that there was no material change in the amount of the assets or liabilities of the Fargo Company from January to August, 1896. (Rec., 270.) The outstanding accounts and bills receivable were collected by the Rubber Companies and realized a total of $43,012,44 as the result of the most diligent efforts to collect and convert them into money. (Rec., 298, 299.) Mr. Porter, one of the Rubber Companies' counsel, testifies that the total accounts on the books were $128,499. Of this amount only $69,500 were live accounts, and the remainder were old, stale and uncollectible. (Rec., 300.)

We thus find that the true condition of the Fargo Company in January, 1896, when the fraudulent scheme was inaugurated, was substantially as follows:

Liabilities	$436,653.00
Assets	120,512.44
Shortage	$316,140.56

At this very time the Fargo Company was vigorously pressed for payment by its other creditors, whose demands it could not satisfy. (Rec., 200.)

The foregoing facts show that the Fargo Company was hopelessly and irretrievably insolvent on January 2, 1896, at the time the scheme we attack had its origin.

In the throes of bankruptcy from which no business man could honestly expect to escape, the Fargos telegraphed for their friend Charles L. Johnson, who was likewise the confidential representative of the Rubber Companies, and in response to this message Johnson came to Chicago and brought with him Houston M. Sadler, Jr. They reached Chicago on January 2, 1896, and on the evening of that day

commenced, with Charles E. Fargo, negotiations which on the 6th terminated in the agreement, the character of which is now assailed by the Respondents.

THE MOTIVES WHICH ACTUATED THE RUBBER COMPANIES IN MAKING THE SECRET AGREEMENT BY WHICH THEY GOT AND MAINTAINED SECRET CONTROL OF THE FARGO COMPANY.

When Johnson and Sadler reached Chicago, January 2, 1896, in answer to Fargo's urgent telegram, the Rubber Companies had at stake and in danger of losing the same, $284,900, as follows:

Due Candee Co. on claim past due April, 1895 (Rec., 513, 514)	$ 44,900
Due United States Rubber Company on claim past due when Johnson reached Chicago (Rec., 289)	140,000
Due on consignments for rubber goods previously consigned to, and then in the possession of the Fargo Company (Rec., 187)	100,000
Total	$284,900

By reason of the course of dealing between the Fargo Company and the Rubber Companies with respect to these consigned goods, the Fargos and their solicitor, Mr. Thomas Cratty, insisted at the Auditorium interview, January 2, that the consigned goods were at that time the property of the Fargo Company, at least as between its other creditors and the Rubber Companies, and were subject to attachment at the suit of such other creditors. (Rec., 340, 341, 342.)

The precarious status of these consigned goods was announced to Johnson by Mr. Cratty during the progress of the negotiations, and substantially acquiesced in by the parties (Rec., 340–343):

"I think," says Mr. Cratty, in answer to a question put

by Mr. Beale (Rec., 344), "the conclusion we arrived "at was that the *goods were in a dangerous condi-* "*tion in January if other creditors should attach* and the "Rubber Companies should undertake to claim them but "after that time I really believed they were perfectly safe."

By "after that time" Mr. Cratty referred to the period after the inauguration of the January scheme.

Thus it appears that when Johnson and Sadler reached Chicago they represented an unsecured claim of $44,900, nearly a year old; a second unsecured claim of $140,000, all past due; and a third unsecured claim for consigned goods, aggregating over $100,000, the title to which they found in imminent danger. This makes a total of $284,900, due the Rubber Companies when the January interview took place at the Auditorium Hotel, the greater part of which would be lost, if not immediately and absolutely secured.

The Fargos likewise had absolutely nothing to lose and everything to gain by prolonging the existence of the Fargo Company. Apparently the Fargo brothers were possessed of a considerable personal fortune in addition to their interest in the corporation (Rec., 327.) They were personally liable in January, 1896, as indorsers upon the Fargo Company's commercial paper, and were eager for any scheme which promised to prolong the company's existence so that they might get rid of this personal liability as indorsers before the final collapse. In the plan adopted they saw a possibility of securing this result. (Rec., 214. In fact, they were eminently successful, for all the outstanding paper on which they were indorsers, was paid off and taken up before August, 1896, when the final collapse came, and the Fargos guaranteed no paper for their com-

pany after the January scheme was set in motion. (Rec., 214–215.)

We now reach that stage in the history of the Fargo Company during which was launched the secret scheme by which the Rubber Companies undertook to control the Fargo Company, appropriate all its assets, and exclude its other creditors from all share therein.

JOHNSON AND SADLER REACHED CHICAGO JANUARY 2, 1896, IN ANSWER TO FARGO'S TELEGRAM AND HAD THEIR FIRST INTERVIEW WITH THEIR COUNSEL, MR. BEALE, AND CHARLES E. FARGO, PRESIDENT OF THE FARGO COMPANY, ON THAT DAY.

At the first interview, on January 2, 1896, the Fargos told Johnson that the Fargo Company was in pressing need of $25,000—raised afterwards to $50,000—to keep the concern afloat; that the company would have to "go to the "wall at once" if it did not then get the money. (Rec., 200, 202.) Although the relations between the Fargos and the Rubber Companies had been intimate for years, and their dealings had reached millions, Johnson at first refused to advance a single dollar. On the contrary, without any investigation or inquiry, he demanded that the Fargo Company should at once prefer the Rubber Companies, to the exclusion of all other creditors. (Rec., 201.) *Fargo refused, saying that if the Rubber Companies gave him no assistance, the Fargo Company would treat all of its creditors on an equality, and he knew of no reason why the Rubber Companies should be preferred.* (Rec., 511, 552.)

On these subjects Johnson testified as follows:

"Q. (Rec., 512.) When the subject of chattel mort-"gages was discussed, who was present? A. Mr. Beale, "certainly, Mr. Charles Fargo, certainly; I am inclined to "think Mr. Sadler and Mr. Cratty.

"Q. Had you made up your mind to make the advance "before the Fargos had refused to secure your people? A. "I had not.

"Q. (Rec., 511.) Did you not, when you first came to "Chicago, or during your stay in January, 1896, insist or "request the Fargos to secure the old indebtedness to the "companies you represented, without advancing any addi- "tional moneys, and did not Charles Fargo say that he "*would not do that, but would treat all the creditors alike?* "A. To that effect, yes.

"Q. Did he also say that he preferred treating all the "creditors on an equality? A. Words to that effect."

On this point Mr. Beale testified as follows (Rec., 552):

"In the discussion (from January 2 to 6, 1896), Mr. John- "son had said to Mr. Fargo, one day in my hearing, that if "they were unable to get the advance, *and they had to go* "*to the wall*, he thought, in view of past treatment, the "Rubber Companies ought to be preferred by the Fargo "Company; but this observation was not met with any "particular favor by Mr. Fargo, who said if they could "not get further assistance and had to fail, they proposed "to treat all the creditors alike."

Under these circumstances, the Rubber Companies would have been compelled to share *pro-rata* on their claims, aggregating $284,900, with the other creditors, had they not, by advancing the $50,000, purchased the absolute control of the assets and corporate powers of the Fargo Company, and thereby put themselves in a position to appropriate all its property and assets to their own use, at their pleasure, *but always at the sole risk of other creditors who might, in the meantime, give the Fargo Company credit.*

The Rubber Companies concluded to purchase control, as the only thing left them, and as a result of that determination there was evolved the scheme of control, which for brevity, we call the January Scheme.

JOHNSON AND SADLER UNDERSTOOD THAT THE FINANCIAL CONDITION OF THE FARGO COMPANY WAS HOPELESS.

The Rubber Companies claim that the Fargos stated the amount of their assets and liabilities while the January negotiations were in progress. On this subject Mr. Beale testifies: "I do remember, in a general way, that Mr. "Fargo asserted that his assets were largely in excess of "his liabilities." (Rec., 550.) Johnson says: "A brief "examination of some figures they presented indicated "to us that the business was fully solvent." (Rec., 497.)

Fargo says he "Produced figures showing the "assets and liabilities of the corporation." (Rec., 226.) Counsel finally got Fargo to say that he told Johnson that his liabilities were $378,000, and assets $550,000, viz.: Factory at Dixon, $175,000 (abandoned by the Bank as worthless); merchandise, $150,000; and accounts, $225,000. (Rec., 262–264.) But during these January negotiations, which lasted nearly a week, Johnson and Sadler, two shrewd business men, familiar with large affairs, did not even visit the Fargos' place of business (only a few blocks away); made no examination of the Company's books or assets; asked for no inventory; made no inquiry into the character of the outstanding accounts. (Rec., 519.) Johnson, after a rigid cross-examination, gives as the sole reason why he and Sadler made no investigation that they did not have sufficient time to do so, although they were in Chicago nearly one week, solely on this business, and with nothing else to do. One hour spent on the ledger of the Fargo Company would have shown Johnson that the accounts did not exceed $130,000 at their face, and that 50 per cent. of these accounts were old, stale and uncollectible. The Rubber Companies' claims (including consigned goods) amounted

to about $284,900, and only deliberate and willful blindness could have induced Johnson and Sadler to estimate the company's assets at over one-half that sum.

But it is manifest from the evidence as a whole that Johnson and Sadler clearly recognized the critical condition of the company and its practically hopeless bankruptcy.

Compare their conduct in 1896 with their attitude in 1893, when they believed the concern solvent. During the panic of 1893, when the Bank demanded security, Mr. Johnson was sent for, as we have stated (p. 5), and came to Chicago as the friend of the Fargos. In that distressing period of the commercial history of this country, Johnson saw nothing in the condition of the Fargo Company that demanded any drastic measures, and insisted that the demands of the Metropolitan National Bank were unreasonable, and did his level best to induce the bank to recede from its position; he accepted judgment notes for the Rubber Companies only when the Bank insisted upon that kind of security, in order to be placed on a level with the Bank itself.

If other evidence on this point were lacking, the peremptory telegram sent by Johnson to Beale on January 7 would sufficiently show his anxiety of mind and keen realization of the precarious condition of affairs.

Mr. Beale, counsel for the Rubber Companies, himself testifies that although the judgment notes had been actually delivered before Johnson left Chicago, about January 6th, the other details of the January arrangement had not been completed, nor had the change in the directorate been accomplished; that this delay was due to insistence on the part of Fargo that the various conditions upon which the Rubber Companies should have the right to enter up

judgment and close up the company should be definitely specified in a written agreement. Mr. Beale further says:

"I finally became very much provoked at Mr. Fargo's "captious attitude. He and Mr. Cratty assented to the "written agreement as finally drafted, and then they "wanted a provision put into the note, substantially as "would be put into a note secured by a trust deed, to the "effect that the notes were subject to the agreement. * "* * I flatly refused to consent to it, as being likely to "lead to a lot of trouble in the future. * * * I told "him that I thought for a man whose concern was em- "barrassed, and who stated it must go to the wall if it did "not get some temporary help to pull it through its "temporary embarrassments, he was displaying a "good deal of captiousness. * * * I showed him "a telegram which I had received on the 7th of January, "from Johnson, reading as follows: '*Sadler has ex-* "*plained the situation to me. Think position should* "*be made absolute as soon as possible, by completing agree-* "*ment as arranged, and organization of board of directors* "*to prevent giving other judgment notes.* * * * *Fail-* "*ure to thus protect us, should result in executions by us.* "*Use, at your discretion, all judgment notes in your posses-* "*sion, in order to put our claim beyond peradventure.*'" (Rec., 554.)

This telegram being exhibited to Fargo, he yielded, and placed the control of the Fargo Company and all its property, in the hands of Johnson (Rec., 555), to be exercised by him in the interest of the Rubber Companies *at his sole discretion*, although at that time the Rubber Companies had advanced only $10,000. (Rec., 556.)

Johnson & Beale would not permit the new directors of the Fargo Company to vote the judgment notes, but insisted upon this authority being given by the old board; this conclusion was reached after an examination of the Illinois authorities on the subject of insolvent corporations. (Rec., 444.)

On this subject, Gilbert E. Porter, one of the Rubber Companies' counsel says (Rec., 446):

"The reason which actuated Mr. Beale and me to have "the judgment notes made by the old board instead of the "new and have them delivered prior to the change in the "Board of Directors was that we considered it better to do "so, because of the application of the rule *that a director "of an insolvent corporation* is not allowed to secure any "benefit to some one whom he represents. We looked up "several cases, among them that of *Blair* v. *Illinois Steel "Company.*"

Mr. Beale (Rec., 447) speaks to the same effect:

"I concluded it would be safer for the old board to act "to avoid any question which might be made in the fu-"ture."

These cumulative precautions, this exhaustion of every possible safeguard that the ingenuity of able counsel could devise, is a sufficient answer to the claim that the Rubber Companies had the slightest faith in the solvency of the Fargo Company, or in the personal honesty of the Fargos themselves.

THE CHIEF ELEMENTS OF THE JANUARY SCHEME BY WHICH THE RUBBER COMPANIES WERE TO SECURE ABSOLUTE AND SECRET CONTROL OF THE FARGO COMPANY.

After the threat of the Fargos to treat all their creditors on an equality, and their positive refusal to prefer the Rubber Companies unless the latter purchased such preference by advancing $50,000, Johnson and Sadler concluded to buy control of the assets and corporate powers of the Fargo Company, if, in its then financial distress, counsel could devise some method by which "absolute" security could be given, not only for the $50,000 to be advanced, but also for all their

pre-existing claims, absolute and contingent. Johnson demanded this absolute security over and over again. (Rec., 502, 511, 523.) Various plans for accomplishing this result were discussed. Simple judgment notes were first considered, and rejected, because the Fargo Company would be at liberty to give like judgment notes to other creditors. (Rec., 503.) Then the advisability of taking chattel mortgages as security was canvassed; but the parties concluded that the giving of a chattel mortgage would make it impossible for the Fargo Company to continue to buy goods on credit and borrow money—essential elements of the scheme—all parties understanding that any disclosures of that nature would destroy the credit of the Company. (Rec., 279, 513, 551, 567.)

Finally, the following new and novel scheme was settled upon, viz.:

1. The consigned goods should be separated by themselves on the sixth floor. (Rec., 340, 342.)

2. A special bank account should be opened for all sales of rubber goods received from the Rubber Companies on consignment, and special account books should be kept of such sales, (Rec., 426, 427).

3. Judgment notes payable *on demand* and aggregating $236,500 should be given to the Rubber Companies to secure not only pre-existing, but any possible future claims, direct and contingent.

4. The Candee notes for $44,900 should be paid as fast as they matured and they were all paid by April 27, 1896. (Rec., 531, 532.)

5. The Fargo Company, *when it had to suspend*, should assign all its accounts then existing and after acquired, to the Rubber Companies. (Rec., 205.)

6. The executive officers of the Fargo Company should be prohibited from giving any kind of security or preference to any other creditor.

7. The board of directors and secretary and treasurer of the Fargo Company should be placed in the absolute and secret control of the Rubber Companies (Rec., 552, 556).

8. The Fargos should be held out to the world as still owning and controling the corporation; and

9. Finally the whole scheme should be kept secret by all parties.

CONSUMMATION OF THE JANUARY SCHEME.

The resolution of January 6, in which the scheme is outlined, was drawn by the Rubber Companies' counsel. It is true, that none of the new directers had then been installed by the Rubber Companies, but the meeting of January 6th was held *for the express purpose, and was the first step in carrying out the scheme of control*, which had prior to this meeting been determined and agreed upon. (Rec., 61 to 63.) Eliminating its plausible recitals referring to the financial condition of the Fargo Company and its prospects, then in fact hopeless, this resolution provides:

1. That the Candee Company would lend its credit as an accommodation endorser to the Fargo Company to the extent of $50,000, by discounting the Fargo Company's plain notes, aggregating $51,500, and turning the proceeds over to that company;

2. That the Fargo Company would execute its three judgment notes to the two Rubber Companies, one for $45,000, payable to the Candee Company, to secure its contingent liability as endorser upon the plain notes given in settlement of the old account past due in April, 1895;

one for $51,500 to the Candee Company to secure its contingent liability on the plain notes aggregating $51,500, representing the new credit to be loaned by that company to the Fargo Company; and one for $140,000 to the United States Rubber Company to secure its claim against the Fargo Company, then past due:

The resolution closes with:

3. "This company hereby promises and agrees that "WHENEVER it *shall be found necessary for this company to* "*suspend business* it will then assign and transfer to said "Johnson for said Rubber Companies, as additional securi- "ties for their claims against this company (Fargo Com- "pany), all such book accounts, credits, bills receivable and "choses in action as shall be then owned by or due to this "company." (Rec., 62, 63.)

The next step in carrying out the scheme was the resignation of five of the then seven old directors, and the election of George C. Madison, Tiffany Blake, Buell McKeever, Frank B. Fuller and Gilbert E. Porter, clerks and employes in Mr. Beale's office, to fill the vacancies. None of these new directors ever owned a share of stock, or had any personal interest in the Fargo Company. (Rec., 484.)

On the same day McKeever was elected secretary and treasurer of the Fargo Company. (Rec., 64.)

THE NEW DIRECTORS WERE MERE DUMMIES MOVED AT THE WILL OF THE RUBBER COMPANIES.

The Rubber Companies now claim that Mr. Beale's clerks were independent directors, and did not represent the Rubber Companies. The record shows they were selected and were to act (and did act when the crisis came

solely in the interest of the Rubber Companies. (Rec., 488.)

The written draft of the January arrangement itself, the subject of so much discussion between the parties to this fraudulent scheme and afterwards abandoned under the pressure of Johnson's threatening telegram of January 7th, in favor of an "open arrangement" (Rec., 437) which left everything to Johnson's discretion, provides: "*The directors and officers elected at the instance of said Beale * * * are expected to act as may be necessary to guard and protect the interests of said Johnson and of said Rubber Companies.*" (Rec., 588-589.) When the collapse came in August, Mr. Porter called these directors together in his office, and at his command (Rec., 490) they voted the Bank two judgment notes for $25,000 each, and the conveyance of the Dixon plant. Contemporaneously with the doing of these things the Rubber Companies and the Bank entered into a pooling agreement, by the terms of which the Rubber Companies and the Bank were to share *pro rata* in the proceeds of the Fargo property and assets. (Rec., 385.)

None of these directors, excepting Porter, knew at any time why they were elected directors of the Fargo Company, except that they understood, and were informed, in a general way, by the counsel for the Rubber Companies that they were merely nominal directors, and were to act in the interests of the Rubber Companies under the instructions of counsel. Excepting Porter, they knew nothing at any time of the business, or affairs of the Fargo Company; took no personal interest in its financial condition; never went to its premises; made no inquiries as to its affairs, and performed no acts as directors, except those performed under the express orders of the Rubber

Companies' counsel. (Rec., 480, 494.) Their duties were predetermined and fixed in advance by the Rubber Companies, as part of the scheme of control. Their own testimony in the record shows with clearness, that they obeyed the orders of the Rubber Companies, given through their counsel, and performed, and expected to perform no act as directors, except in obedience to such orders. (Rec., 480–481, 490, 493–495.)

When the Fargos wished to take the Metropolitan Bank into the scheme, Mr. Beale stated that the Rubber Companies alone could determine the matter, and sent Fargo to New York to secure authority. (Rec., 562.)

When Mr. Keith, President of the Bank, came to Porter's office in August to make the arrangements by which the Bank was "taken into the deal," he learned, to use his own striking words, that Fargo was a "TOOL IN PORTER'S HANDS" (Rec., 403), and that "THE FARGO COMPANY WAS SUBSTANTIALLY IN THE HANDS OF THE ATTORNEYS OF THE RUBBER COMPANIES." (Rec., 403.)

Having lost all confidence in the solvency of the Fargo Company and in the personal honesty of the Fargos themselves, the two Rubber Companies further insisted upon binding the Fargos, hand and foot, by the following resolution, which was adopted January 9th:

"The president, or in his absence the vice-president, "shall be empowered to sign and indorse ordinary promissory notes and to make and execute contracts, drafts, and "checks for the purpose of carrying on the usual and necessary business of the company; *but no officer or officers "of the company shall have the power to sign, make or execute any mortgage, warrant of attorney to confess judg- "ment, contract or other instrument in writing having the "effect to create a lien or charge, or possibility thereof, upon "the property and assets of the company or any part*

"*thereof, or having the effect to give any creditor or credit*
"*ors of the company any lien, charge or security upon said*
"*property and assets or any part thereof, except pursuant*
"*to the special authority of the board of directors.*" (Rec., p. 66.)

This change in the by-laws was made on Beale's insistence, so as to prevent the president, alone, giving judgment notes. (Rec., 563.) So, likewise, Mr. Beale says: "I "wanted one of the five to be the secretary and treasurer, "because ordinarily, judgment notes would be signed not "only by the president of the corporation, but by the sec- "retary or treasurer. I was willing to take the chances "as against any judgment notes executed by the president "not expressly authorized—affirmatively authorized by the "board of directors." (Rec., 556.)

ABSOLUTE SECRECY WAS ESSENTIAL, AND WAS EXPRESSLY INTENDED, AGREED UPON AND CARRIED OUT, TO INDUCE INNOCENT THIRD PARTIES TO SELL GOODS TO THE FARGO COMPANY ON CREDIT.

Absolute secrecy was essential to the success of the scheme of control finally adopted. Without secrecy, the Fargo Company would be unable to buy a dollar's worth of goods on credit after January.

The Master finds that "the indebtedness of the Fargo "Company, which was incurred after January 9, 1896, " * * * was incurred in ignorance of the * * * "arrangement existing between the Rubber Companies and "the Fargo Company." (Rec., 164.) How this result was accomplished is clearly shown by the evidence.

Mr. Fargo testified, *and his evidence is uncontradicted:*

"*A. Our effort was to keep it secret and we succeeded.*
"*Q. You and your brothers and the other people who*

"*were concerned in this agreement with the Rubber Com-*
"*pany in January, were very desirous of keeping the matter*
"*secret and quiet so that other people could not find it out;*
"*that was the fact, wasn't it? A. Yes, sir.*

"*Q. And this arrangement about the board of directors*
"*and the giving of these judgment notes, in the way it was*
"*done,* WAS FOR THE PURPOSE OF KEEPING THAT MATTER SO THAT
"PEOPLE WITH WHOM YOU WERE DEALING COULD NOT FIND IT
"OUT? *A. Yes, sir.*" (Rec., 426.)

Chattel mortgages were rejected, because placing them on record would ruin the credit of the Fargo Company.

Mr. Beale, in his testimony, stated (Rec., p. 567):

"I did not take for the Rubber Companies a chattel
"mortgage on the stock of goods of the Fargo Company
"for two reasons. First. It was a shifting, changing
"stock. Second. It involved putting the chattel mort-
"gages on record, which would have ruined the credit of
"the Fargo Company."

At first it was suggested that the new directors should include the local agent of the United States Rubber Company and another rubber man, but Fargo told Beale:

"If you should take a man around the street in our line
"of business, they will talk, and at once it will create a
"lot of unnecessary gossip. You know damage can be
"done that ought not to be done, just as damage can be
"done to a woman's reputation by discussing it; that the
"credit of a commercial house is something that can not
"be talked about on the street. If this merchant, or that
"merchant, is put in as a director of this corporation, it
"will arouse some discussion, and I would rather have
"them taken from your office." (Rec., 273.)

Beale testifies that he objected, *because he did not care to have the people in his office taking the responsibility*, but afterwards *acquiesced*. (Rec., 556, 240-241.)

In the early stages of the discussion the parties supposed that four directors out of the seven would be suffi-

cient, but Beale insisted that the Rubber Companies should nominate five directors, to meet the possibility that one might die, and he wanted one of the five *to be secretary and treasurer*, because, ordinarily, judgment notes would be signed by the secretary and treasurer. (Rec., 556.)

Accordingly, five young men, employes in Mr. Beale's office, were selected to constitute the controlling element in the new board of directors. This choice was admirably suited to secure to the Rubber Companies absolute control of the Fargo Company, and at the same time keep the knowledge of that fact from the commercial world. Not only were they clerks in the employ of Mr. Beale, they were in fact (with one possible exception) lawyers themselves. Blake, one of the dummy directors and a young lawyer, testified that he considered it a "*professional matter*" (Rec., 489), and for that reason he did not deem it proper to mention the matter to his brother, who was an employe of the Fargo Company. Indeed, he says that at one of the "meetings" "one of the gentlemen" asked *him not to say anything to his brother about it.* (Rec., 489.) The new secretary and treasurer of the company were likewise chosen from these employes.

Up to this time the three Fargos had been the executive heads of the Company; it was necessary to maintain that position in the public eye, so that the fundamental change in the condition of the Fargo Company might not be disclosed to the world. Accordingly, Charles E. Fargo was retained as president, and Frank M. Fargo was to pose before the public as treasurer; it was secretly agreed that he should perform, as before, all the treasurer's duties, though of course no "official" action was taken in the matter. (Rec., 570.) *In the correspondence afterwards carried on by the Fargo Company with its creditors and the*

public generally, printed letter heads were used on which the officers of the Fargo Company were named as before, viz: Charles E. Fargo, president; Edward A. Fargo, secretary, and Frank M. Fargo, treasurer. (Rec., 353.) This was done with knowledge of all the parties to this fraudulent scheme.

The desperate anxiety of the parties to keep the scheme secret is well illustrated by the testimony of the Rubber Companies' counsel as to the interview between himself and Fargo in July. Mr. Beale says (Rec., 561) that in the middle of July Fargo told him he had a note coming due at the Bank, which the Bank insisted should be paid; that he could not go to Keith, the President, and explain why he could not pay because there would be some "*embarrassing questions*" asked. After discussing this distressing situation, Beale and Fargo finally decided, *that Fargo should put a new note in a letter written to the Bank, so as to have the entire information contained in the letter, in order not to have any "embarrassing questions" asked;* this was done, and the note extended accordingly. Even the Bank was ignorant of the altered condition of affairs until August, when Charles E. Fargo asked permission to disclose the facts to Keith, and take the Bank into the scheme, in order to enable him to borrow $10,000 for himself and his brothers to "live on." (Rec., 191–192.)

Late in July or early in August, a $10,000 note matured at the Bank, and Fargo told the Rubber Companies that he would not ask a renewal, unless the Bank was informed of the arrangement and taken care of *because he did not feel it would be quite square or honest to do so.* As to the Bank, such conduct would be dishonest, these parties confess, but

boldly declare that under the same circumstances, to buy merchandise on credit was fair and legitimate trading.

The record, as a whole, discloses that when the January scheme was launched, it was not only the design, and an essential part of the scheme that it should be kept secret, but it was in fact kept secret at all hazards, for the express purpose of inducing innocent traders to give credit to the Fargo Company.

THE COURSE OF DEALING SUBSEQUENT TO THE JANUARY SCHEME.

The January scheme put the Rubber Companies firmly in the saddle. They had secured not only secret, but absolute control of all the then existing and after-acquired assets of the Fargo Company, and complete dominion over its corporate powers. In the words of Mr. Beale himself, "*The Fargo Company was entirely in the hands of the "Rubber Companies*" (Rec., 438). Charles E. Fargo, as president, Edward A. Fargo, as vice-president, and Frank M. Fargo as "acting" treasurer, continued to pose in public as the managers of the concern; kept open its office and place of business, and ostensibly conducted its affairs, seemingly as before; used in their correspondence with the Rubber Companies and also with the concerns from whom they were purchasing goods on credit and borrowing money, printed letter-heads bearing the false statement that F. M. Fargo was treasurer, and Edward A. Fargo secretary; while, as a matter of fact, during all that time, Buell McKeever, the representative of the Rubber Companies was secretary and treasurer. By these means the Fargos and the Rubber Companies preserved the credit of the Fargo Company, and enabled it to purchase, during the succeeding six months, great quantities of merchandise from the Respondents, *which must have constituted the*

bulk of the property levied on by the Marshal under the Rubber Companies' executions.

THE RUBBER COMPANIES EXTENDED LITTLE OR NO CREDIT TO THE FARGO COMPANY AFTER THE JANUARY SCHEME.

The Rubber Companies, however, after they had bought and secured secret control carefully refrained from taking any further chances, or in any way sharing the risk they compelled other creditors to take. The Candee Company did not sell or consign the Fargo Company a dollar's worth of merchandise after January. The United States Rubber Company sold the concern only $600 worth on credit, and consigned it only $18,000. (Rec., 544, 545.) That this was not accidental, but carefully designed, is shown by Mr. Beale's letter to Sadler, under date of May 5, 1896, in which he says: "THERE IS ONLY ONE THING ABOUT WHICH I "WISH TO CAUTION YOU IN THIS CONNECTION, AND THAT IS NOT "TO LET THE FARGO INDEBTEDNESS INCREASE, BECAUSE ANY "SUCH INCREASE PROBABLY WOULD NOT BE PROTECTED BY THE "JUDGMENT NOTES." (Rec., 591, 592.) The title to these consigned goods, under the new precautions devised by counsel, remained in the Rubber Companies, and they could easily retake at any time, all unsold goods. The business world, however, deceived by the false appearance of things, extended credit aggregating over $246,660.54. (See Master's Report, Rec., pp. 161, 163.) The proof in this case discloses that all the liabilities of the Fargo Company existing in August, to creditors other than the Rubber Companies and the Bank, were created subsequent to the January scheme. (Master's Report, Rec., p. 163.)

THE RUBBER COMPANIES KNEW, WHILE THE COMPLAINING CREDITORS WERE BEING "DRAWN IN" THAT THE FARGO COMPANY MUST "GO TO THE WALL."

These claims, including those of the Respondents, and other creditors who proved up before the Master, exceed $180,000. (See brief p. 87 and Rec., 137, 138, 141.) This course was deliberately persisted in for six months, in spite of the knowledge frequently brought home to the Rubber Companies that the Fargo Company was merely staggering along from day to day and month to month, in a hopelessly embarrassed condition. The letter from the Fargo Company to Sadler, dated April 27, 1896 (Rec., 581), shows that the Fargo Company's receipts during April "*were one-third less than their calculation, "and forty per cent. less than the preceding year, and that "this was likely to continue.*" And yet up to this time, the Fargo Company had paid $40,000 to the Rubber Companies, and $5,000 the following month, so that practically the whole of the $50,000 January loan went back to the Rubber Companies within four months after the same had been advanced. Much of the merchandise for which the Fargo Company is now indebted, was purchased after this letter was written, and *the claim of the American Oak Leather Co., exceeding $12,000, was entirely created after March 14, 1896.* (Rec., 324.) (Master's Rep., Rec., p. 167.) Moreover, the resources of the Fargos were drained by heavy and constant payments to the Rubber Companies. There was paid to the United States Rubber Company, on June 22, $5,000; on July 8, $5,000; July 20, $5,000; and at this very time, in June and July, the Fargos were procuring extensions from the Respondents, on grossly false representations (Rec., 326, 327), and were protesting to the Pfister

& Vogel Leather Company that they could do nothing to pay, or secure its claim, fortifiying their protestations with like false statements. (Rec., 318.)

The Fargos likewise, between January and August, *paid off and took up all the paper on which* (in January) *they were liable as endorsers* for the Fargo Company, and thus succeeded in their design to free themselves from personal liability. (Rec., 215.)

The Rubber Companies *received between January 6th and August 6th over $60,000*, besides the $100,000 worth of rubber goods.

FRAUDULENT AND DECEITFUL REPRESENTATIONS MADE BY THE FARGOS TO THE DIXON BANKS AND OTHER CREDITORS AFTER JANUARY IN ORDER TO OBTAIN MONEY AND GOODS ON CREDIT.

The course of dealing, and the intentions of the parties to these transactions, can best be illustrated by calling attention to the fraudulent representations repeatedly made after the January scheme had been entered into, in order to induce innocent persons to loan the Fargo Company money and sell it goods on credit during the period in which the Rubber Companies were conducting its corporate movements. It is true that most of these representations, so far as the record discloses, were personally made by the Fargos, but this was to be expected, nor does this fact put the Rubber Companies in any better light. It was not to be supposed that the Rubber Companies themselves would be engaged in making representations (in person), false or otherwise, as to the condition of the Fargo Company. Their connection with that concern was intended to be, and was in fact, kept absolutely secret. They were in control of the Fargo Company through its board of directors.

They turned the Fargos loose upon the community to secure merchandise and money on credit, by any means which they might see fit to employ. The efforts of the Fargos in that direction, were a direct benefit to the Rubber Companies. It was an essential element of the scheme that every dollar's worth of merchandise which the Fargos could procure on credit, would go to swell the available assets out of which the Rubber Companies could make their claims at their discretion. Every act of the Fargos in furthering this fraudulent end, is directly chargeable to the Rubber Companies.

We have already called attention to the fact that in the entire correspondence of the Fargo Company, both with the Rubber Companies and with the creditors generally between January 6th and August 6th, the Fargos used printed letter heads containing positive, false representations as to the officers of the company. These letter heads are shown in the record at page 384. They read as follows:

"*Chas. E. Fargo, Frank M. Fargo, Edward A. Fargo,*
Prest. V. P. & Treas Secty.
C. H. Fargo & Co.
Manufacturers of Boots and Shoes
196, 198, 200 Market Street, Chicago."

These letter-heads constituted material, false representations of matters of fact. During the time that they were used, Frank M. Fargo was not treasurer, nor was Edward A. Fargo secretary of the company. On the contrary, the dummy secretary and treasurer, Buell McKeever, secretly held both of these offices. A number of representatives of concerns who gave the Fargo Company credit during this period testified as to the receipt of letters with these letter-heads, and that the printed matter thereon created the im-

pression in their minds that no change had occurred in the management of the Fargo Company, but that the three Fargos continued as before, in sole control. If, in lieu of these false statements, the letters had contained the truth, namely: that Buell McKeever, a clerk in the office of the Rubber Companies' counsel, was both secretary and treasurer of the Fargo Company, suspicion, amounting to certainty, would at once have been created, that something was wrong with the management of the concern.

FALSE REPRESENTATIONS BY THE FARGOS TO THE DIXON BANKS.

The first tangible act which the evidence shows to have been performed by these parties after the January scheme was set in motion, consisted in false representations and false pretenses, whereby the Fargo Company obtained large loans of money from banks with which they had formerly done practically no business, and to which they had never previously applied for credit. Early in February, Frank M. Fargo, fraudulently *posing as the treasurer of the Fargo Company*, went to Dixon, where the factory was located, and applied to the Dixon National Bank and the City National Bank for loans. Up to this time these banks had never loaned the Fargo Company any money. To allay suspicion he told the two banks that the Company wanted the money to build an addition to its Dixon factory, which would result in larger employment of local labor and contribute to the growth and development of the town; that under the circumstances the Dixon banks ought to be willing to advance the money for that purpose. (Rec., 305.) He further assured them that the Company's business was in good shape; that it had never been so prosperous; that it *had no judgment notes outstanding*, and no mortgages or anything of that kind. (Rec., 303-316.)

On these false representations and false pretenses Fargo induced the banks to loan the Company $17,000. The items are proved up before the Master and are allowed in the decree in this case. It is true that the Company thereafter, for the purpose of keeping up appearances, made a small addition to its Dixon factory, but certainly only a nominal amount, if anything, of the sums so borrowed, was used for this purpose. The total cost of the addition did not exceed $7,000 (Rec., 251), *and this could never have been paid for*, because mechanic's liens, which were afterwards foreclosed, swept away the entire Dixon plant. (Rec., 252.)

False Representations by the Fargos to the Pfister & Vogel Leather Company.

In July, 1896, the Pfister & Vogel Leather Company had a claim of about $17,000 for goods sold after February, 1896, and the Fargo Company had applied for an extension. In connection with this application, Mr. Vogel, of that company, came to Chicago and had an interview with Charles E. Fargo on July 21. (Rec., 318.) This date, it will be remembered, is the one upon which the Fargo Company paid $5,000 to the United States Rubber Company, and is the date upon which the note matured which Mr. Beale telegraphed to the Rubber Companies, would cause the failure of the Fargo Company, unless an extension was secured. The extension was secured by the questionable *device of mailing the renewal note to the bank without any explanation*, and thereby avoiding "*embarrassing questions.*" (Rec., 561.) Mr. Vogel's account of what took place in this conversation with reference to his inquiries of Fargo as to the financial condition of the Company, is as follows:

"I says, 'Are you really solvent?' He says, 'I have "got two dollars for every one that I owe.' * * * I "says, 'Have you got any judgment notes out, or has any "body got any preferences here?' He says, 'No.' (Rec., "318.) I had pressed him for a statement. * * * "He then told me that they were in the midst of an inven- "tory, and that they would furnish that statement very "shortly. That statement never came." (Rec., 319.)

After this testimony was given Fargo was placed on the stand by the Rubber Companies. In his testimony, while endeavoring to mitigate the bald falsity of the statement to which Vogel testified, he admitted that the latter must have understood from the conversation that the Fargo Company had no judgment notes out, and admitted also *that he endeavored to give Vogel that impression.* (Rec., 419, 425.)

False Representations to the Commercial Agencies.

To cap the climax, Charles E. Fargo furnished a statement to Dun's Agency, as a basis for general credit, about June 9, 1896, which reads as follows (Rec., 327.)

"Mr. C. E. Fargo now gives us the following figures showing condition as per inventory May 1, 1895, which was the last taken:

ASSETS.

Merchandise	$245,438 89
Printing and stationery	1,100 00
Insurance	1,400 00
Furniture and fixtures	6,500 85
Factory at Dixon	110,262 66
Real Estate	2,223 09
Accounts receivable	366,359 08
Cash	5,869 38
	$743,153 95

LIABILITIES.

Bills payable	$167,589 31	
Accounts payable	158,925 43	
		$326,514 7
Net surplus		$416,639 2

Says condition would probably not be materially change at present, * * *."

This statement was made the basis of a report by Dun' Agency, and furnished to the trade generally, among others to the American Oak Leather Company; that company, in reliance upon this monstrously false statement, extended from June until September and October, notes aggregating $7,000, part of its claim now in judgment. (Rec., 326.)

CORRESPONDENCE BETWEEN THE FARGO COMPANY AND THE RUBBER COMPANIES AND THEIR COUNSEL AFTER THE JANUARY SCHEME WAS LAUNCHED.

Some of the correspondence between the parties is disclosed in the record. These letters and telegrams were offered by the defendants themselves, and it is safe to assume that only those most favorable to Petitioners' contention, were presented. A careful consideration of this correspondence throws considerable light upon the course of dealing and intentions of the parties. The material extracts are as follows:

"CHICAGO, April 27, 1896.

"*Mr. H. M. Sadler:*

"* * * *The receipts this month, which are one third "less than our calculations, and 40 per cent. less than in the "same time last year. This is likely to continue.* * * *

"*This, of course, contemplates the payment in cash, as fast* "*as collected, for present and future sales. We have now* "*paid about $40,000 of your notes just matured, and have* "*$5,000 to pay next month, which shall be paid outside* "*foregoing.* We are pushing hard on old accounts, *but* "*they come in very slowly.* * * *

C. H. FARGO & CO.
(Rec., 581.) CHARLES E. FARGO."

Within a few days after this letter was received in New York, Mr. Beale wrote from Chicago the following warning letter to his client, which was evidently inspired by their receipt of information showing that the crisis was approaching.

"CHICAGO, May 5, 1896.

"*H. M. Sadler, Jr., Esq.:*

* * * "Sometime ago the indebtedness upon an "open account to the United States Rubber Company was "put into the form of a note or notes, and I remember say- "ing either to you, or Mr. Johnson at that time, that I "thought a letter ought to be written by the Fargo Com- "pany or Mr. C. E. Fargo saying that it was the *intention* "*that the judgment note in favor of the United States Rub-* "*ber Company should secure the indebtedness in whatever* "*form it might stand, and whether absolute or contingent.* "I am now under the impression that you did not obtain "such a letter at the time, *but I still think, as a matter of* "*precaution, it would be worth while to have such a letter* "*to meet possible future questions, in case the Fargos should* "*hereafter go to the wall. I propose to prepare two such* "*letters as I have in mind,* one to be addressed to the Can- "dee Company and one to be addressed to the United "States Company, to be signed by the Fargos as stock- "holders * * * With the new notes properly distrib- "uted between the two companies, *and with such letters, I* "*do not see why the companies are not as safe as human* "*foresight can well make them, without closing down on the* "*Fargo Company and driving it out of business.* * * *

WILLIAM G. BEALE.

"P. S.—Since dictating the above, I have telephoned "Mr. Fargo to explain to him * * * He expresses "an entire willingness to have the matter in such shape as "will be satisfactory and safe for us, and will accordingly "send such letters as we may prepare * * * *There is "only one thing about which I wish to caution you in this "connection and that is not to let the Fargo indebtedness in-"crease, because any such increase probably would not be "protected by the judgment notes.* W. G. B."
(Rec., 591.)

The following letters of May 14th and 15th, are apparently those prepared by Mr. Beale:

"CHICAGO, May 14, 1896.

"*Mr. H. M. Sadler, Jr.:*

* * * "We beg to say for the purpose of preventing "any question about the matter, that it was our under-"standing and the understanding of all concerned, at the "time the judgment notes were executed * * * that "such judgment notes should be collateral to, and security "for any and all liability * * * whether evidenced "by open account or by other notes which might be given "for such liability thereafter. * * *

C. H. FARGO & CO.
CHARLES E. FARGO,
President."

(Rec., 583.)

"CHICAGO, May 15, 1896.

"*Mr. H. M. Sadler, Jr.:*

* * * "We understand also that the judgment notes "you hold, will protect you fully in respect to any contin-"gent liability upon any notes of C. H. Fargo & Co. "which you may have discounted, or may discount. *This "is a suggestion from Mr. Beale's office, which we are glad "to follow.*

C. H. FARGO & CO.
CHARLES E. FARGO,
President."

(Rec., 584.)

"May 16, 1896.

"*Wm. G. Beale, Esq.:*

"Your favor of the 14th inst. came duly to hand. Thanks "very much for the detailed information and instructions "covering the whole situation. *We will be very careful "and guided accordingly.*

"Regarding the consignment stock which Fargo had "been selling since January 1, I understood from him "when in Chicago, that he was keeping separate books "and collecting the money and placing it to a special ac- "count in his bank, as per his agreement, and that he "would forward us in a few days, a check for the amount "collected. * * *

H. M. Sadler, Jr."

(Rec., 593.)

Telegram.

"Chicago, July 16, 1896.

"*To H. M. Sadler, Jr.:*

"Metropolitan Bank has asked Fargo Company, because "of alleged tight money market, to pay note for ten "thousand dollars, due July 21st. Fargo Company una- "ble to pay and extension may be refused. *Fargo promi- "ises to keep me informed so that if necessary, judgments "can be entered on our judgment notes.* Better wire me "amounts now owing respectively to United States and "Candee Companies, including any discounted notes on "which they are liable as endorsers. *Better also wire me "authority to take whatever steps I may think necessary for "protection of companies. Possibly you or Mr. Johnson "better come here.*

William G. Beale."

(Rec., 593.)

Telegram.

"New York, July 16, 1896.

"*Wm. G. Beale:*

"Will be in Chicago Sunday night and see you Monday "morning with all papers relating to Fargo situation; judg

"ment notes will cover amount due this company at pres-
"ent time as far as we know; should any action be required
"before I arrive, use your best judgment for interests of
"this company.

H. M. SADLER, JR."

(Rec., 594.)

TELEGRAM.

"CHICAGO, July 17, 1896.

"*To H. M. Sadler, Jr., New York:*

"Fargo advises us has just received pleasant letter from
"Metropolitan Bank agreeing to extend note due on 21st
"instant. This apparently leaves matter all right for the
"present.

(Rec., 594.)

WILLIAM G. BEALE."

The "pleasant letter from the Metropolitan Bank" was probably the result of the convenient arrangement testified to by Beale and Fargo under which Fargo put a new note in a letter and sent it to the Bank, so as to have all the information contained in the letter and to avoid "embarassing questions," which might be asked by President Keith if Fargo requested the renewal in person. (Rec., 561.)

THE INDEBTEDNESS OF THE FARGO COMPANY AT THE TIME OF ITS FAILURE, AUGUST 6, 1896.

The Master finds that the total unpaid indebtedness incurred after January 6, 1896, was $142,690.95 (Rec., 163), which is an error, and is nearly $40,000 less than the claims actually proved up and filed with the Master under the order of the Circuit Court, entered March 11, 1897, and by him reported on May 29, 1897, as having been actually filed with him pursuant to said order. (Rec., 137.) The claims so filed aggregate $180,037.53.

The Master fell into this error by following the report of the accountant Cooper, who testified that *the books of the Fargo Company* showed the indebtedness—at the time of the failure—to be $142,690.98. (Rec., 458, 460 and 461. But Cooper admits that the books did not contain *all the claims*, and that he had no knowledge as to whether the books were or were not correct (Rec., 467), and declares that some of the necessary books were missing. (Rec., 468.) The record does not disclose who secreted or destroyed these books. They were last known to be in the possession of the Fargos. They were important books, and consisted of one ledger, inventory books, balance records, etc. No testimony was introduced to show that the Fargo Company books, on which Cooper based his estimate of liabilities, were correct. Cooper's testimony shows that he was merely stating his estimates from what he saw in the books which he had before him, and the finding of the Master based on his testimony must fall. The record shows conclusively that under the order of March 11, 1897, claims to the amount of nearly $40,000, *in excess of the Master's findings*, were actually filed with him.

To these claims amounting to $180,037.53, so filed with the Master, must be added the liens on the Dixon plant; these liens were so large that when foreclosed the Bank refused to redeem the property for which it had paid $25,000, by cancelling one of its two judgment notes. While the record is silent as to the amount of these liens, it seems to us to be a fair and reasonable inference that they must have been large and probably equal to the purchase price paid by the Bank for the equity in the Dixon plant. If these liens be added to the total indebtedness of the Fargo Company at the time of its failure, and the amount of such liens be fixed at $25,000, then the total

indebtedness at that time reached the figure of $205,037.53, instead of $142,680.98 as erroneously found by the Master.

THE CONSUMMATION OF THE JANUARY SCHEME AND THE FINAL COLLAPSE OF THE FARGO COMPANY.

The crisis which seemed impending in the middle of July was not avoided, but only postponed a few days by the "letter expedient" then adopted to deceive Keith into renewing the $10,000 note. By this device the parties avoided, for the time, answering "embarassing questions," and succeeded in securing the desired extension. Their keen anxiety and appreciation of the critical condition of affairs is sufficiently shown by the telegrams of July 16th and 17th (see pp. 37–38 *supra*) which passed between Mr. Beale and Mr. Sadler at this time. At the end of July matters again got desperate. Another $10,000 note was coming due at the Bank which could not be met, and Fargo had a talk with Mr. Beale about having this note extended and borrowing $10,000 of new money from the Bank. (Rec., 208.) Fargo says he felt that *it would not be honest to borrow this new money from the Bank without disclosing the January arrangement* and taking the Bank into the scheme. (Rec., 209.) When it was suggested that it would be best to take the Bank in, the Rubber Companies' counsel told Fargo that he must go to New York and *get the consent of his clients to the proposed arrangement*. Fargo went to New York the last day of July, saw Sadler, told him that unless the Bank's note was extended the Fargo Company would have to go overboard. (Rec., 189.) Sadler consented that the proposed arrangement with the Bank should be made. (Rec., 209.)

But no negotiations looking to this proposed loan were actually entered into with the Bank until August 4th, and

in the meantime the note in question matured on August 2nd, and its renewal was obtained without any apparent difficulty. (Rec., 189.) By what trick this note was renewed is not disclosed by the record. Fargo says: "I simply sent and had it renewed." (Rec., 189.)

The final crisis came on August 4th. Fargo had an interview with Mr. Porter, at which they evidently came to the conclusion that the Fargo Company could not be kept afloat any longer, and it was arranged between them that Fargo should procure $10,000 from the Bank, not for the purposes of the business, but to be turned over to the Fargos for their personal use. (Rec., 449, 265.) Fargo accordingly went to Keith and made a full disclosure of the situation. (Rec., 191.) Upon that disclosure the Bank deliberately paid the $10,000 to be taken into the January scheme, and on the same day agreed with the Rubber Companies to close up the Fargo Company and appropriate all its assets, sharing in the proceeds *pro rata*. Sadler's consent to this arrangement was obtained by Porter over the telephone. (Rec., 451.) After this arrangement had been determined upon matters proceeded very rapidly.

On August 5th Mr. Porter called into his office the dummy directors, and by his commands (Rec., 490) a resolution was passed by these dummies authorizing the giving of two judgment notes to the Bank, not for $40,000—the amount of its true claim—but for $50,000 ($25,000 each), which included the proposed fraudulent $10,000 payment; another resolution passed at the same time and in the same way, authorized the conveyance to the Bank of the Dixon Plant (real estate) located at Dixon, Illinois, for an expressed consideration of $25,000, but in satisfaction of one of the Bank's $25,000 judgment notes. (Rec., 67. Two judgment notes for $25,000 each were immediately

executed and delivered to the Bank; one was at once cancelled and surrendered back to the Fargos in payment of a conveyance of the Dixon Plant. (Rec., 198, 199.) *After all this had been done*, the Bank paid over the $10,000 to the Fargos, and not before. All these things were done at the same time, and for the same purposes. (Rec., 453.) As Mr. Porter testified: "WE HAD IT ALL PROGRAMMED OUT IN ADVANCE." (Rec., 453.)

On August 6th a resolution was adopted by the stockholders (not by the directors), pretending to authorize a transfer of all the book accounts to the two Rubber Companies. These accounts, without any action by the board, were then attempted to be assigned, and together with all the books of the Fargo Company, were "delivered" to the Rubber Companies. Simultaneously judgments were entered by confession in the United States Circuit Court: one in favor of the United States Rubber Company for $145,400; one in favor of L. Candee & Co. for $38,300; and one in the Circuit Court of Cook County in favor of the Metropolitan Bank for $25,000. These three judgments were entered at the same time and in concert, but it was arranged that the Marshal should be put in possession under the Rubber Companies' judgments, before the Bank's execution was placed in the Sheriff's hands, probably in order to avoid the danger of replevin suits, to which the property would have been subject had the actual levy been made by the Sheriff. (Rec., 457.) Accordingly, executions on the Federal judgments were at once levied by the United States Marshal on the Company's merchandise at Chicago and at Dixon.

The property so seized was afterwards sold. The Chicago merchandise realized, at public sale, $65,000, which sum, less expenses, etc., has been turned over to the re-

ceiver in this cause. The merchandise and chattel property at Dixon were bid in by, and sold to the United States Rubber Company for $15,000, but were afterwards turned over to the receiver and sold by him for $12,500.

THE CONVERSION OF THE CONSIGNED GOODS BY THE RUBBER COMPANIES.

While the Marshall was in possession, the consigned goods on hand, amounting to over $100,000, were taken out of the Fargo's place of business, by the Rubber Company's agent, and shipped back to New York. (Rec., 539.)

THE NEGOTIATIONS AND AGREEMENT BY WHICH THE METROPOLITAN BANK WAS TAKEN INTO THE SCHEME TO SHARE PRO-RATA WITH THE RUBBER COMPANIES IN ALL THE FARGO ASSETS.

On the afternoon of August 4, 1896, Fargo saw Porter, and stated to him that he intended to go to the bank and borrow $10,000. (Rec., 441.) Fargo then called on Keith at the bank and had the first interview concerning the proposed $10,000 loan, telling Keith that the Fargo Company would have to fail, and *that he and his brothers wanted the $10,000 to live on.* (Rec., 191.) Keith swears that Fargo told him that the Fargos had previously borrowed $10,000 elsewhere, and had pledged certain bank stock, which they owned personally, as collateral, and that they needed the $10,000 to redeem the bank stock. (Rec., 389.) That this was an individual matter, and he thought he ought to have the money to take care of the note (Rec., 389); and that Fargo told him that having put the money into the firm's business he thought he was entitled to have the firm pay it back to him. (Rec., 393.)

Whatever the facts may be as to just what language was used by Fargo in his talk with Keith, it is perfectly clear from this record that Keith was fully advised at the time of this first interview *that the Fargo Company must immediately fail, and that the $10,000 was desired for the benefit of the Fargos individually.* The affidavit filed by Mr. Keith on the former hearing is worth considering at this point. In this affidavit Mr. Keith claims, with more or less evasiveness, that the $10,000 was loaned to the Fargo Company to *assist that firm in prosecuting its legitimate business* and *to relieve its financial distress.* (Rec., 659.)

If there be one thing clear in this record, it is that the $10,000 was paid over on August 5 or 6, *after the judgment notes were actually given to the bank, and after Fargo had been authorized to sell the Company's plant to the Bank, and after this sale had been actually consummated.* The resolution authorizing the execution of the judgment notes was not passed until the afternoon of August 5. (Rec., 67.) At this same meeting of dummy directors, Fargo stated that he had "begun negotiations" with the Bank for the transfer of the Company's Dixon plant for $25,000, and a resolution adopted at that meeting authorized him to consummate the sale. The transfer was immediately carried into effect, the judgment notes confessed and the accounts assigned. At the very first interview between Fargo and Keith, the latter knew that the Fargo Company would have to go to the wall. (Rec., 192.)

After this interview, Keith, in company with the Bank's counsel and Jones, visited Porter's office and there learned that the Rubber Companies were preparing to enter up judgments (Rec., 391), that five out of seven of the directors were young men in Beale's office, and that, in the language of Keith himself, "*Fargo was a tool in Porter's hands, and*

"*the Fargo Company was substantially in the hands of the "attorneys for the Rubber Companies.*" (Rec., 403.)

Before the $10,000 loan (so-called) was consummated or paid over to Charles E. Fargo, the Fargo Company was in the actual throes of dissolution, and the Bank and the Rubber Companies had already agreed in a formal written instrument to unite their efforts to collect their respective claims, and that the result of their efforts should be distributed in the proportion of their respective claims, including the fraudulent $10,000 paid by the Bank to the Fargos personally; that if either party received a larger percentage on his claim than the other, as a result of their united efforts, he would account to such other party for a sum sufficient to make the percentage of payments of their respective claims equal. (Rec., 385.)

Specifications of Error.

The errors and cross errors assigned upon the record, present three questions:

First. Were the Petitioners *guilty of any fraud whatever?*

Second. Were the Petitioners *guilty of constructive fraud?*

Third. Were the Petitioners *guilty of actual fraud.*

Guided by *Hubbard* v. *Tod*, 171 U. S., 494, the Respondents applied to this court for *certiorari*, which was granted. The whole record, including all assignments of error filed in the trial court and considered by the Court of Appeals, is now here.

The case of *Hubbard* v. *Tod supra*, we respectfully suggest, leaves it in some doubt, as to whether this court on *certiorari* to the Court of Appeals, after final or

der or decree considers that final order or decree, or the decree entered in the Circuit Court.

Respondents have therefore, (for the convenience of the court, so as not to encumber this brief), printed the errors, (being very full and specific), assigned by them to the original decree of the Circuit Court, under separate cover, accompanying this argument. The errors and cross errors will be found in the record at large. (Rec., 645, 646, 667–692.)

We therefore, respectfully ask the court, if our assignments of error to the decree of the Circuit Court are to be specifically considered, that the court will refer to the printed specifications of error accompanying, and hereby made a part of this brief.

BRIEF OF THE ARGUMENT.

I.

The January Scheme was Fraudulent as to all Creditors, and Especially Fraudulent as to the "Drawn in" Creditors who parted with their Property after the Scheme was Launched.

The scheme disclosed by this record shocks the conscience. In its opinion (Rec., 725) the Court of Appeals said: "*As a judicially sanctioned, or commercially accepted possibility in business, it is unbelievable.* "It could be attempted only by a corporate debtor; and "its approval by the courts would afford a new and fruitful motive for the creation of corporations by the many, "who would be quick to avail themselves of so promising "a method of pursuing hazardous enterprises at the risk of "others."

This rugged characterization presents the scheme in all its nakedness.

The concrete form into which the January machinery was finally thrown, was invented by the parties with the express design of obtaining the same unconscionable advantages over innocent creditors, which secret chattel mortgages and like fraudulent devices would have given them. The Rubber Companies' counsel believed that the January scheme would give his clients all that secret chattel mortgages and like devices would have given them, without the risk and hazard surrounding such instruments. The testimony of Beale and Porter, who originated the scheme (Rec., 444) shows that secret chattel mortgages and like devices were

carefully canvassed and promptly rejected (Rec., 444), because without the publicity of recording, the security would be worthless against other creditors; and if recorded, the credit of the company would in the words of Mr. Beale, be ruined. On this subject, Mr. Beale says: "*I did not take for the Rubber Companies a chattel mortgage on the stock of goods, for two reasons: First: it was a shifting, changing stock; and secondly: It involved putting the chattel mortgage on record, which would* RUIN THE CREDIT OF THE FARGO COMPANY." (Rec., 567.)

In the language of the Circuit Court of Appeals:

"The scheme adopted, which, if upheld, though not constituting a recognized form of lien, would be a better security than a chattel mortgage, was accepted, not only because it made secrecy possible, but because it made exposure impossible, if those employed to execute it, kept faith." (Rec., 725.)

It is doubtful if any of the innumerable schemes invented to defraud creditors and which have been condemned by the courts, give to their inventors advantages so directly destructive of the rights of innocent third parties, as the fraudulent machinery disclosed by this record. The scheme adopted by the Rubber Companies may justly be characterized as novel and original, the like of which, so far as diligent search enables us to speak, was never before conceived, or put into actual use. Fortunately, courts of equity have always refused to confine themselves to any limited definition of fraud, and this record is only another striking illustration of the wisdom of such refusal.

Lord Hardwicke, in his letter to Lord Kames of the 30th of June, 1759, (Parke's Hist. of Chanc. P., 508), says:

"Fraud is infinite, and were a court of equity once to lay down rules how far they would go, and no farther,

"in extending their relief against it, or to define strictly "the species or evidence of it, the jurisdiction would "be cramped and perpetually eluded by new "schemes which the fertility of man's invention would "contrive."

1 Story's Eq. Juris. (11 Ed.), Sec. 186, Note 5.

* * * * *

The "January scheme," when analyzed, discloses the following elements:

1. The Rubber Companies thereby obtained and exercised the power to convert at their pleasure, all existing, all after-acquired, all tangible, and all intangible property of the Fargo Company, and appropriate the proceeds to the exclusion of all other creditors.

2. The Rubber Companies secured absolute power to prevent (at their sole discretion) the Fargo Company from preferring, or paying any other creditor.

3. While the Rubber Companies were in possession and control of the corporate powers and assets, the Fargos were to be held out, and were in fact held out to the world as being in actual control of the Company and its property.

4. The Fargos were permitted, for an indefinite period, to buy, sell and ostensibly carry on the business as they saw fit, until the Rubber Companies, *in the exercise of their discretion*, elected to appropriate the assets to their own use, and shut out all other creditors.

5. Creditors other than those favored by the Rubber Companies, were absolutely prevented from obtaining "any mortgage, warrant of attorney to confess judgment, "contract or other instrument in writing, having the "effect to create a lien, or charge, or possibility "thereof, upon the property and assets of the Company,

"or any part thereof, or having the effect to give any "creditor or creditors of the Company any lien, charge or "security upon said property and assets, or any part "thereof." (See Fargo Co. resolution of January 9th, Rec., p. 66.)

6. Creditors other than the Rubber Companies could not obtain liens by executions until long after the Rubber Companies had appropriated all the assets to their own use.

7. And finally, the scheme was to be kept secret by all the parties, and was actually kept secret for the express purpose and with the express result of inducing innocent third parties to sell the Fargo Company merchandise on credit, at the sole risk of such third parties.

This analysis discloses that the Rubber Companies acquired by the January scheme all the advantages they could have obtained by a chattel mortgage (kept secret by agreement between the parties) on a stock of going merchandise, reserving to the mortgagor the apparent possession and apparent dominion over the property, with the permission to continue business by selling and appropriating the proceeds at his discretion until the mortgagee should see fit to foreclose.

But the scheme in question secured to the Rubber Companies greater and more inequitable advantages and powers than could be obtained even by such a secret chattel mortgage, viz.:

First. It brought within their secret grasp, control and practical possession, not only all the existing chattels and accounts of the Fargo Company, *but also all after acquired tangible and intangible property.*

Second. It gave the Rubber Companies control over the

volition of their debtor, and rendered that debtor powerless to do justice to other creditors; and thereby

Third. It enabled the Rubber Companies to escape the risk which the law compels the holder of an unrecorded chattel mortgage to assume, viz., the risk that his secret lien may be defeated by the prior record of a junior encumbrance.

This risk, among others, the policy of the law compels the prior mortgagee to assume, if, through accident, inadvertance or mere negligence he fails to record his prior mortgage. (*Field* v. *Ridgely*, 116 Ill., 424.) But where the security, in whatever form it may exist, is given with the express understanding that it is to be "kept secret," the law visits a more drastic punishment upon the parties to the transaction by declaring the lien, or security to be fraudulent in fact as against innocent "drawn-in" creditors. By the scheme here adopted, the Rubber Companies sought to secure all the advantages of a secret mortgage, and at the same time avoid these risks. To that end the Fargo Company was tied hand and foot, and placed in the secret possession of the mortgagees; at the same time, it was permitted to remain in the ostensible possession and control of its assets, and thereby put in a position to delude the commercial world by the fictitious standing and credit thus dishonestly begotten. This scheme and the resulting advantages, were possible only with a corporate debtor.

II.

The Rubber Companies Understood that the Fargo Company could not go on in Business Without Future Credit; that Credit could not be Secured if the January Scheme were disclosed; it was Vitally Essential that Absolute Secrecy should be Maintained to Secure such Credit, and Absolute Secrecy was by agreement Maintained, for that specific purpose, until the final Collapse in August.

If the Fargo Company could not purchase goods on credit, all parties understood that its doors must be closed. It is monstrous for counsel to even suggest that the parties did not understand, or intend secrecy to be a vital and essential element of the scheme itself.

The Master finds that "the matter was kept secret in "order to allow the Fargo Company an opportunity of get-"ting through embarrassments apparently temporary." (Rec., 162.) This means, and can only mean, that they were to continue the business under a plan, which, without secrecy, was known to be impossible, and by which the risks of the business were shifted wholly upon innocent creditors who parted with their property in ignorance of the true situation. True, the Master says "the plan was "kept secret, but not with a fraudulent intent as to the "other creditors of the Company." The Master differs widely from Charles E. Fargo, who declared to Mr. Beale in July that he would not ask the Metropolitan Bank to renew a $5,000 note without disclosing the whole scheme, because TO DO SO WOULD HAVE BEEN DISHONEST. (Rec., 209.)

When the renewal of another bank note was under consideration, Mr. Beale himself agreed with Fargo that it would

not be safe to ask the Bank for such extension, because its President, Mr. Keith, might ask "embarrassing questions;" and thereupon, Beale and Fargo agreed to send the renewal note by mail, and thus avoid the necessity of disclosing the secret (Rec., 561.)

Charles E. Fargo stated under oath that the January scheme was, by agreement, kept secret for the specific purpose of enabling his company to obtain credit. This is nowhere denied or challenged. Not a witness has dared to contradict him. This is what Fargo says:

"A *Our effort was to keep it secret and we succeeded.*
"Q. *You and your brothers and the other people who were*
"*concerned in this agreement with the Rubber Company in*
"*January, were very desirous of keeping the matter secret*
"*and quiet so that other people could not find it out; that*
"*was the fact, wasn't it?* A. *Yes, sir.*
"Q. *And this arrangement about the board of directors*
"*and the giving of these judgment notes, in the way it was*
"*done,* WAS FOR THE PURPOSE OF KEEPING THAT MATTER SO
"THAT PEOPLE WITH WHOM YOU WERE DEALING COULD NOT
"FIND IT OUT? A. YES, SIR." (Rec., 426.)

Blake, one of the dummy directors and a young lawyer, testified that he considered it a "*professional matter*" (Rec., 489), and for that reason he did not deem it proper to mention the matter to his brother, who was employed by the Fargo Company. Stronger than his own view of the secret character of the transaction, is the statement he makes that at one of the director's meetings "*one of the*
"*gentlemen asked him not to say anything to his brother*
"*about it.*" (Rec., 489.)

To keep faith with Beale and Johnson and preserve the January scheme inviolate, Fargo confesses that he deliberately deceived Pfister & Vogel, as to the existence of the January scheme (Rec., 425), and thereby secured renewals;

that he deceived the American Oak Leather Company, Dun's Mercantile Agency, the Eagle Tanning Works, and all creditors who had the right to seek, and did seek information concerning the situation and condition of the Fargo Company. Frank M. Fargo denied the existence of the January scheme and thereby deliberately deceived the Dixon banks and secured $17,000, two months after the scheme had been launched.

Did the Rubber Companies expect the Fargos when asked by their creditors concerning the condition of the Company, to disclose the January arrangement, or did they expect them to equivocate and deceive? If the Fargos had told the truth to inquiring creditors, Johnson and Beale must have known that their plan would collapse, and the Company would be unable to secure a single dollar of additional credit. Credit was expected, intended and absolutely necessary to the success of the plan; therefore, Beale and Johnson must have known, if they gave the subject any thought, that the Fargos must and would equivocate and deceive when questioned by their creditors. The Rubber Companies and their representatives put the Fargos in a position where the latter were forced, either to deceive their creditors, or make known the January scheme. As reasonable men, Johnson and Beale must be presumed to have had in mind and considered, the natural and probable consequences of such false and deceptive conduct. They are therefore responsible in law and in morals for every false statement made by the Fargos after the January scheme was set in motion.

As throwing a flood of light upon this subject, and showing that Beale and Johnson did consider the question we have just discussed, we direct attention to an interesting passage in the opinion of the Circuit Court of Appeals. (The italics are our own):

"After explaining that he (Beale) had personally cau-
"tioned Charles Fargo against being too hopeful, * * *
"he added, 'I was particularly desirous that through any
"strong temptation he (Fargo) should not put the Metropoli-
"tan Bank *in a position where it could claim to have been*
"*deceived*. I do not think that the idea of other creditors
"—merchandise creditors, or their position—entered the
"mind of either Mr. Johnson or Mr. Sadler or myself
"during the entire transaction: we were thinking of the
"Metropolitan Bank and were anxious to see that that
"indebtedness should not increase after we made the
"arrangement, and that subject—reference to the Metro-
"politan Bank—formed the subject of some conversation
"between Johnson and myself, and I distinctly remember at
"one of the interviews at the Auditorium Annex saying
"that Fargo after that must not go to the Metropolitan
"Bank to borrow additional money.'

"One creditor at least, was important enough to be
"thought of and talked of, and to be the object of solicit-
"ous care, that 'through any strong temptation' Fargo
"should not put it (the Bank) in a position where 'it could
"claim to have been deceived.' What stronger con-
"demnation could there be of the scheme, or better proof
"that its essential character was apprehended, (though
"unconsciously, according to the Master's finding) by
"those about to put it into operation? There were potent
"reasons for thinking of the bank, and for desiring that it
"should not have ground for asserting deceit. Mercantile
"creditors were farther away, and individually, of much
"less importance, it is easy to see, than the Bank. * * *
"But all that, only emphasizes the wrong done in for-
"getting others equally entitled to consideration, *if they*
"*were forgotten*, and if they were purposely left out of
"consideration, still greater was the wrong." (Rec., 726.)

The testimony and the Master's report show that the secrecy in this case was a secrecy kept for the specific purpose of enabling the Fargo Company to secure merchandise on credit at the sole risk of the merchant or manufact

urer. It was *premeditated secrecy;* without such secrecy the January scheme was impossible. Beale, Porter and Fargo, the active factors in this enterprise, admit in their testimony that secrecy was indispensible, and secrecy was preserved. Says Mr. Beale, "PUBLICITY WOULD RUIN THE CREDIT OF THE FARGO COMPANY." (Rec., 567.)

That such a secret scheme, deliberately entered into, and carried out, constitutes nothing less than actual fraud, would seem to need no argument.

The Illinois authorities which we discuss at some length, (pages 120–130 of this brief), present an unbroken front on this proposition. They hold without exception, that when an agreement exists by which a chattel mortgage or kindred lien is to be kept off the record, or otherwise kept secret, such agreement vitiates the security, and, in the language of Judge Mulkey, in the *Haas—Sternbach* case, is a "*a wicked conspiracy to defraud creditors.*"

In discussing an analogous state of facts, where a mortgage was kept off the record "with the express purpose "and intent on the part of the mortgagees, * * "of giving them (the mortgagors) this fictitious credit and "standing, to no other possible end than that they should "thereby be enabled to deal with, and to the detriment of "others, to contract debts, to gain extension of old debts," * * the Supreme Court of Alabama says:

"We can not be in doubt that the transaction is tainted "with *actual fraud*, which will vitiate it as against subse- "quent creditors, and the like, who have been drawn into "contractual relations with the mortgagors by assuming "their apparent, to be their real status, with respect to "the property covered by the mortgage, and this result "follows, notwithstanding the conveyance is free from in- "firmity in every other respect."

Lehman v. *Van Winkle*, 92 Ala., 443.

Likewise, the Supreme Court of the United States, by Mr. Justice Woods, said, in *Blennerhassett* v. *Sherman*, 105 U. S., 107:

"So, in *Hillard* v. *Cagle* (46 Miss., 309), it was held "that a deed of trust in the nature of a mortgage, valid on "its face, and not made or received with any intent to "defeat existing or future creditors, may nevertheless be "held to be fraudulent and void as to all creditors, existing "and future, by evidence *aliunde*, showing the conduct of "the parties in their dealings in reference to the deed. "The principal circumstance relied on in this case to avoid "the deed was the fact that the grantor retained posses- "sion of the property and the deed was withheld "from record, and the mortgagor was thereby enabled "to contract debts upon the presumption that the prop- "erty was unincumbered. The court declared that the "natural and logical effect of the agreement and assign- "ment, and the conduct of the parties thereto, was to mis- "lead and deceive the public, and induce credit to be given "to the mortgagor, which he could not have obtained if "the truth had been known, and, therefore, the whole "scheme WAS FRAUDULENT AS TO SUBSEQUENT CREDITORS, AS "MUCH SO AS IF IT HAD BEEN CONTRIVED FROM THAT MOTIVE "AND FOR THAT OBJECT."

The Supreme Court of Colorado in another like case says:

"When the grantor of a trust deed and the beneficiary "agree together that the trust deed is not to be recorded "as provided by law, that it may not affect the financial "standing of the grantor, THE EVIDENT FRAUDULENT INTENT "BECOMES EXPRESS."

Stock Growers' Bank v. *Newton*, 13 Colo., 255.

In another Colorado case the facts in many respects are very strikingly similar to the case at bar. H. P. Walton, being indebted to his brother, E. T. Walton, arranged that he should be secured, at all hazards. The creditor brother

suggested that the debtor should give a judgment bond, but the latter objected to having the bond entered of record, saying that a judgment, or anything so public, would affect his credit. Finally, the debtor gave the creditor brother a confession of judgment, which it was agreed should be kept secret and should not be filed in court until the failure of the debtor.

In the opinion, the case of *Smith* v. *Craft*, 17 Fed. Rep., 705, is distinguished, on the ground (among others) that in the latter case there was no security given at the time the agreement to prefer was made, and no promise to keep the same secret, and, concluding, the court say:

"The transaction between the Waltons in this case is "deemed FRAUDULENT, not merely on the ground that E. "T. Walton continued to give credit and make advances to "his brother when he knew him to be insolvent, for he had "a right to trust his brother to any extent in the ordinary "course of business without imperiling his legal right to "secure his debt. Neither is the transaction to be deemed "FRAUDULENT merely on the ground that he took a confes- "sion of judgment for his debt: for he had a right in the "ordinary course of business to receive a confession of "judgment on account of a lawful debt at any time, but "the FRAUDULENT CHARACTER OF THE TRANSACTION CONSISTED "IN appellant's taking the security he did under an agree- "ment that it should be kept from the public, that is, not "entered of record, so long as the collection of appellant's "debt was not thereby imperiled, thus deliberately giving his "brother a fictitious financial standing in his known failing "circumstances, and placing him in a position to perpetrate "fraud by obtaining credit, as in case of appellee, which "would otherwise be withheld, while appellant held a con- "fession of judgment with which to protect himself when "others had trusted his brother and were helpless.

* * * * *

"While the witholding of a confession from the record "for a considerable length of time may not be necessarily

"fraudulent, an agreement between the party giving and "the party receiving such an instrument, that it shall be "kept from the public, or that it shall not be entered of "record for an unreasonable or indefinite time, IS ONE OF "THE STRONGEST BADGES OF FRAUD."

Walton v. *First National Bank*, 13 Colo., 265.

"Such a transaction is *fraudulent* as to other creditors."

Goll & Frank Co. v. *Miller*, 87 Iowa, 426.

"It was held by this court in *Goll* v. *Miller*, 87 Iowa, "426, that such a transaction was *fraudulent* as to other "creditors and that case was followed by *Falker* v. *Line-* "*han*, 88 Iowa, 641."

Liddle v. *Allen*, 90 Iowa, 738 (1894.)

See also to the same effect the authorities discussed, *infra*, pp., 112–119, and

Davis v. *Schwartz*, 155 U. S., 631.
Sanger v. *Guenther*, 73 Wis., 354.
Standard Paper Co. v. *Guenther*, 67 Wis., 101.
Blakeslee v. *Rossman*, 43 Wis., 116.
Bank v. *Doran*, 109 Mo., 40.
Thompson v. *Van Vechten*, 27 N. Y., 568.
Parshall v. *Eggert*, 54 N. Y., 23.
Karst v. *Gane*, 136 N. Y., 320.
Stephens v. *Perrine*, 143 N. Y., 477.
Crippen v. *Fletcher*, 56 Mich., 386.
Fearey v. *Cummings*, 41 Mich., 383.
Cummings v. *Fearey*, 44 Mich., 39.
Wallen v. *Rossman*, 45 Mich., 333.
Shipman v. *Seymour*, 40 Mich., 274.
Meding v. *Roe*, N. J. Chy., Nov. 5, 1894, 30 Atlantic Rep., 587.
Bank v. *Newton*, 13 Colo., 245.
Hungerford v. *Earle*, 2 Vern. 261.

Hildreth v. *Sands*, 2 Johns (N. Y. Ch.,) 35.
Scrivenor v. *Scrivenor*, 7 B. Mon. (Ky.), 374.
Bank of U. S. v. *Housman*, 6 Paige (N. Y.), 526.
Coates v. *Gerlach*, 44 Pa. St., 43.
Haffner v. *Irwin*, 1 Ired., (N. C.) L., 490.
Hildeburn v. *Brown*, 17 B. Mon. (Ky.), 779.
Neslin v. *Wells*, 104 U. S., 428.
Hoagland v. *Wilson*, 15 Neb., 320.
Steel v. *Coon*, 43 N. W. Rep., 411.
Barker v. *Barker*, 2 Wood, 87.

Moreover, wherever chattel mortgages or arrangements of that nature present the fraudulent features here under discussion, it is the universal doctrine that the fact, that the mortgagee may have taken possession before execution or attachment liens have been acquired, does not strengthen his position against persons who have advanced credit subsequent to the execution of the mortgage, and pending the period during which it has been kept off the record by agreement, or whatever may be equivalent thereto.

III.

The Intent and Motives of the Parties in Concluding and Executing the January Scheme were Fraudulent in Fact, though there may not have been present a Conscious, Personal Intent to Defraud.

To hold that the "January scheme" was fraudulent in fact, as to "drawn in creditors," it is not essential that the parties should have been primarily moved by a wicked and corrupt purpose to enter upon the course of dealing in question, to cheat and defraud other creditors. Nor is it necessary to charge the

Petitioners with a deliberate and corrupt conspiracy to procure goods in the name of the Fargo Company, in order to swell the assets, out of which the Rubber Companies might make their claims at the expense of other creditors.

Even if it were true that the uppermost thought of the Rubber Companies was to obtain at all hazards, absolute security, and the Fargos were primarily moved by a desperate anxiety to escape their personal liability as endorsers, nevertheless their motives and intentions would still be nothing less than actually fraudulent. For the record demonstrates that among the motives and intentions which actuated and controlled the Fargos and the Rubber Companies, both in creating and carrying out the January scheme, there was conspicuously present a general design and deliberate intention;

1. That the scheme should be kept secret;

2. That all persons dealing with the Fargo Company should continue to believe that the corporation was standing on its own feet, with no change in its corporate management or control.

3. And that a false credit might thereby be preserved to the Fargo Company.

Clear it is that the parties intended, and indeed, expressly stipulated, that the claims of the U. S. Rubber Co. should be paid off as rapidly as possible, and the Candee Company's notes paid absolutely as they matured, without extension; they must have intended that the proceeds of the goods obtained on credit after January, should be utilized as far as possible, in the payment of the Rubber Companies' claims; and finally they must have intended that the goods themselves, and the accounts created by their sale, should go to swell the assets, out of which, the Rubber Companies

intended to make their claims when the threatening collapse occurred. (Statement pp. 17–18.)

Moreover, whether the Rubber Companies had accurate information in January as to the assets and liabilities of the Fargo Company or not, they certainly possessed the firm inward conviction that its affairs were in such a desperate condition as to imperatively demand on their part the most extraordinary and cumulative precautions, and the exhaustion of legal ingenuity in devising the "absolute" security so persistently demanded by Johnson—"absolute" (Rec., 590) security for all their claims, direct and indirect, absolute and contingent. (See statement, p. 17, for detailed analysis of said precautions.) On the one hand, they had determined that they themselves would run no risks of any kind; on the other, that the commercial world generally should be deluded into assuming all the hazards which the January scheme involved.

Of course, the record is full of the usual protestations of innocent and laudable motives; but the parties must be judged by their acts, and not by their protestations, after their wrong-doing has been discovered and laid bare.

The facts are hopelessly against them when they set up the claim that the $50,000 advance in January was a loan, made by a creditor to help a debtor out of embarrassments believed to be merely temporary. The $50,000 advance was the price paid by the Rubber Companies in January to secure an unconscionable advantage. In this respect, it stands on the same footing as the $10,000 paid in August by the Bank to be taken into the scheme. In each instance, the money paid represents the purchase price of the advantage secured.

When Johnson and Sadler were advised, at the first Auditorium interview on January 2nd, that the Fargo Company

was in distress and would go to the wall immediately, unless it received assistance, they made no offer to help the Fargos. On the contrary, they not only manifested a perfect willingness that the Fargo Company should immediately fail, but even a keen desire then and there to force the failure, and appropriate its property to the payment of all their claims. They instantly demanded that their own claims should be preferred as a matter of right. The most generous mind can see nothing in the case so far, showing any desire on the part of the Rubber Companies to assist the Fargo Company in its financial struggles. When were Johnson and Sadler transformed from grasping creditors, eager for immediate preferences, into good Samaritans, desirous of helping the Fargos in their distress? The fact is, that Johnson and Sadler never manifested the slightest willingness to advance the Fargo Company a dollar, until they knew from the lips of Charles E. Fargo, *that if the Company had to go to the wall, all creditors would be dealt with on an equality.* This would involve the Rubber Companies in a certain and immediate loss of over $200,000. The stream can not rise higher than its source. (Statement, p. 11.)

The sole ground of the Rubber Companies' conclusion to make this advance, was the certainty that refusal would involve them in an immediate calamity. Their motives in making the advance can not be considered higher than the very purpose which moved them to do so. In other words, the Rubber Companies were driven by the necessity of the situation, to purchase the preference (which had been refused), and pay therefor the $50,000 loan, not money, but merely credit. Can an advance made under these circumstances, be considered for a moment as a voluntary loan made by a creditor to a struggling debtor?

If there was any doubt as to the true character of this $50,000 advance, the real motives of the Rubber Companies in the transaction would be clearly disclosed by their conduct after they got the judgment notes in their possession, and the Fargo Company thus in their power. The Fargos, anxious though they were to procure the money at any cost, nevertheless, tried to make an advantageous bargain, and continued to struggle against the drastic demands of Johnson and his counsel.

At the outset, the Fargos had the whip hand in the negotiations, and utilized their position to compel Johnson to purchase all the advantages which he obtained, and insisted on an elaborate written agreement definitely limiting the rights of the Rubber Companies. The contest between Fargo and Johnson over the terms of this written agreement was prolonged for days; until, in fact, the condition of the Fargo Company became so acute as to make it absolutely necessary for them to have $10,000 at once. Accordingly, $10,000 was handed over on January 6th and the judgment notes executed and delivered to Mr. Beale. Then the tables were turned. The Rubber Companies, with the judgment notes in their possession, were in a position to dictate terms and put an end to Fargo's protests. It seems, however, that the Fargos did not at first appreciate the change in the situation produced by the execution and delivery of the judgment notes, for they still protested against the final surrender of all their powers, and objected to signing the written agreement itself, unless the judgment notes should bear some indorsement showing the terms upon which judgment might be confessed.

Johnson had left for the east on January 6th. Before he reached home he had heard from Sadler, of Fargo's contin-

ned obstinacy. Recognizing that the possession of the judgment notes had put him in a commanding position, whereby he was able to dictate terms to the Fargos, Johnson immediately, before reaching New York, telegraphed peremptory instructions to Mr. Beale to enter up judgment on all the judgment notes, unless the Fargo Company made a complete and immediate surrender of their corporate powers. (See statement, p. 15.) Under this threat the Fargos succumbed, and *agreed to leave everything to the direction of Johnson.* Is this the conduct of a creditor who is desirous of helping a struggling debtor? Johnson's telegram is utterly inexcusable from any point of view. Least of all, is it possible to harmonize his attitude with his present benevolent protestations. The simple fact of the matter is, that Johnson, keenly realizing the precarious condition of the Fargo Company, was frightened at the very thought of further delay. Under the circumstances he had obtained a splendid bargain for his employers, and fearing to lose the advantages thus gained, threatened to wreck the Company immediately, unless his position should be made at once absolutely secure.

Johnson's telegram to Beale is one of the most significant facts in the record, and reads as follows:

"*Your position should be made absolute as soon as pos-*
"*sible, by completing agreement as arranged, and organ-*
"*ization of Board of Directors. * * * Failure to thus*
"*protect us, should result in executions by us. Use at your*
"*discretion, all judgment notes in your possession in order*
"*to put our claim beyond peradventure.*" (Rec., 554.)

That telegram stands out conspicuously, like the scheme adopted to extend the Bank's note in the middle of July, by sending a renewal note in a letter, so as to avoid "unpleasant questions." Items of evidence like these open up *vistas*, wherein the motives and objects of the parties can

be clearly discerned. Certainly the Rubber Companies can not be heard to say that they believed in January that the embarrassments of the Fargo Company were only temporary. The actual course which they pursued was precisely that which would have been adopted if they had in fact known that the financial condition of the Fargo Company was one of hopeless insolvency.

It is extraordinary that during the week in which Johnson and Sadler remained in Chicago, quartered only a few blocks from the Fargo store, and while engaged with their counsel in exhaustive efforts to devise some scheme which would procure absolute security, *they made no effort to get at the actual facts.* With every means of information right at hand and open, they turned away and closed their eyes to the light. (Statement, p. 13.)

The reason for this seeming indifference is clear. Forced liquidation in January would have paid the Rubber Companies, on a *pro rata* basis with other creditors, less than twenty-five cents on the dollar. Had the Rubber Companies then declined to buy control they would have lost in a general crash over $200,000.

But by purchasing control, the Rubber Companies would have the entire assets of the Fargo Company (plus the $50,000 of credit advanced) to apply upon their claims then aggregating $284,000. By lending their credit to the extent of $50,000, the Rubber Companies would, in any event, not only be secured as to the $50,000, but would also save the greater part of their old debt of about $284,000. Accordingly, "absolute" security for all claims, old and new, direct and contingent, was peremptorily and unconditionally demanded by the Rubber Companies as the sole condition on which they would ad-

vance the $50,000 and buy control of the Fargo Company. (Rec., 502, 511, 523.)

Mr. Johnson's instructions to his counsel about the absolute and unconditional character of the security the Rubber Companies demanded appear repeatedly in this record, and show that this was the uppermost thought in his mind, and was created by his firm conviction that the Fargo Company was then hopelessly insolvent and unable to avoid financial collapse. (Rec., 502.)

If anything more were needed to show the utter want of confidence on the part of the Rubber Companies and their representatives in the Fargos, the unusual precautions taken with respect to the consigned goods fixes the matter beyond all debate. For a quarter of a century the Rubber Companies had consigned their rubber goods aggregating millions and millions of dollars. In January, for the first time in their long and intimate dealings with each other, the Rubber Companies demanded the "absolute security" which crops out in almost every page of this record. The January scheme, among other things, provided:

1. That the consigned goods should be separated by themselves on the sixth floor. (Rec., 340, 342.)

2. That a separate bank account should be opened for all sales of rubber goods and special account books should be kept of such sales. (Rec., 427, 428.)

(See statement, p. 17.)

Nothing like these precautions, and in fact, no precautions had ever been taken in the course of the whole quarter of a century dealings between these parties. If the Rubber Companies believed that the distress of the Fargo Company was merely temporary, if they had faith in the honesty of the Fargos, is it reasonable to suppose that they would have

insisted upon these extraordinary measures, which, if their present proclamations of faith and confidence be true, were insulting to the honor and personal integrity of the Fargos themselves?

Under this January arrangement the Rubber Companies had everything to gain, and nothing to lose. From their point of view it would not have made any difference whether Johnson and Sadler had or had not investigated the assets and liabilities of the Fargo Company in January; in either event they would have taken the same course. Johnson's conduct shows that he thought the less he knew about the real situation the better standing the Rubber Companies would have in any future legal inquiry, a suggestion which clearly explains why Johnson wilfully shut his eyes to any definite information regarding the assets and liabilities, when the means of full information were ready at hand.

In determining what actual knowledge the Rubber Companies had as to the real condition of the Fargo Company, the phraseology in the first resolution adopted on January 6, by the Fargo directors in carrying out the January scheme, is important. In the closing paragraph of this resolution drawn by the Rubber Companies' counsel on their behalf occurs the following:

"*And this company hereby promises and agrees that* "WHENEVER *it shall be found necessary for this company to* "*suspend business, it will then assign and transfer to said* "*Johnson for said Rubber Companies, as additional securi-* "*ties for their claims against this company, all such book* "*accounts, credits, bills receivable and choses in action as* "*shall be then owned by, or due to this company.*" (Rec., 62, 63.)

An early suspension of business was contemplated by this resolution. The words above emphasized, would not have

passed unchallenged if an early suspension had not been regarded as highly probable.

That the insolvency and suspension of the Company must have been discussed and gravely considered by all parties, is established beyond controversy by the testimony of Beale and Porter. Said Mr. Porter (Rec., 446-7):

"*The reason which actuated Mr. Beale and me to have "the judgment notes made by the old board instead of the "new, and have them delivered prior to the change in the "board of directors was that we considered it better to do so, "because of the application of the rule* THAT A DIRECTOR OF "AN INSOLVENT CORPORATION *is not allowed to secure any "benefit to* SOME ONE WHOM HE REPRESENTS. We looked up "several cases, among them that of *Blair* v. *Illinois Steel "Co.*"

Considering the facts disclosed by this record, it is inconceivable that if Johnson had, in good faith, believed the Fargo Company solvent, or able to continue its business, he and his counsel would have devised the extraordinary arrangement shown in this case. They might have taken judgment notes, as they did during the panic of 1893; but to insist upon the bodily transfer of the corporate assets and corporate powers to the two Rubber Companies as security, is indisputable proof that the hopeless insolvency of the Fargo Company was well understood by the Rubber Companies and their agents, and that their repeated protestations of confidence in the Fargos are wholly without foundation. They believed neither in the assets, nor in the personal honesty of the Fargos. What Johnson did, was to the letter, what he would have done had he believed the Fargo Company hopelessly insolvent and the Fargos dishonest men. He could have done no more. His intentions must be measured by his acts, and not by his protestations.

Johnson and Beale were profoundly solicitous about the Metropolitan Bank. They repeatedly cautioned Fargo to borrow no money from that institution. Here is what Beale says, as to why he and Johnson were so anxious that Fargo should not borrow any money from the Bank, after the January scheme (Rec., 563-4):

"*I was particularly desirous that through any strong "temptation he (Fargo) should not put the Metropolitan "Bank in a position where it could claim to have been de-"ceived.*"

The Bank was a big institution and on the ground. It would fight, because its claim was large enough to justify an expensive legal contest. The general creditors, whose claims were as a rule small in comparison, could more easily be held at bay.

Thus we have Beale and Johnson's deliberate judgment in January that for Fargo to go to the Bank after the January scheme was launched, and borrow more money, would put the Bank "*in a position where it could claim to have "been deceived.*" According to their code of morals, it would seem perfectly proper for the Fargos to get hundreds of thousands of dollars worth of merchandise on credit, but to borrow a single additional dollar from the Bank would be dishonest. This distinction is beyond our understanding.

In July, when Beale and Fargo found it necessary to secure a renewal of one of the Bank's notes for $5,000, Fargo peremptorily refused to secure such renewal, because, as he says, *he felt that it would not be honest to secure such renewal from the Bank without disclosing the January arrangement and taking the Bank into the scheme.* (Rec., 209.) Mr. Beale then acquiesced in Fargo's condemnation of the January scheme so far as the Bank was concerned. Why was the scheme dishonest as to the Bank, and at the

same time fair and honest as to the deluded creditors who are the respondents here?

PERSONAL, CONSCIOUS INTENT TO DEFRAUD NOT ALWAYS NECESSARY TO CONSTITUTE ACTUAL FRAUD.

But after all, the personal, conscious intent of the parties to the transaction is wholly immaterial. The scheme was, and is, *per se*, fraudulent *in fact*. Its natural and logical effect was to mislead and deceive the public, and to induce credit to be given to the Fargo Company, which it could not have obtained if the truth had been known, and therefore, the whole scheme, even if the motives of the Rubber Companies could possibly be said to have been innocent, was in every respect actually fraudulent as to the creditors complaining here; as much so as if it had been organized with that sole motive and object in view.

All men are conclusively presumed to have intended the usual and natural results of their actions, and neither in criminal, nor in civil law can one be heard to say that his motive in doing an unlawful act was, so far as his own conscience was concerned, innocent. The use of the term "constructive fraud," or "legal fraud," in such a case, is misleading.

A scheme bearing striking points of resemblance to the facts disclosed by this record is elaborately discussed by the Supreme Court of Mississippi, in *Hilliard* v. *Cagle*, 46 Miss., 309. After reviewing the facts the court say:

"The testimony does not convince us that the arrange-
"ment was made with a fraudulent scheme and purpose to
"defeat existing or future creditors. This was not the
"primary motive. Summers & Brannin desired that
"Baggett should continue his business as before,
"but at the same time they were anxious that they

"should be protected at all events, and in any contingency. "If misfortune and calamity should fall upon him, their pur- "pose was to be secure."

And yet the court holds that this could make absolutely no difference:

"In ascertaining the motive, we look through the conduct, "and from it make the deduction and inference. Generally, "this is the only mode of conducting the inquiry. A man "must be conclusively taken to intend the natural and logi- "cal results of his acts. Upon this principle rests his ac- "countability for the violation of criminal laws. It is equally "applicable in civil affairs. If one is actually misled to his "prejudice and loss, by the conduct of another, the injury to "him is just the same as though the thing were done for the "very purpose of deceiving."

Ib., 338.

And reviewing all the actions of the parties, the court concludes:

"We are of opinion that the natural and logical effect of "the agreement and assignment, and the conduct of the "parties thereto, was to mislead and deceive the public, and "induce credit to be given to Baggett, which he could not "have obtained if the truth had been known, and therefore "the whole scheme was fraudulent as to subsequent creditors, "as much so as if it had been contrived with that motive "and for that object."

Ib., 345.

This conclusion is approved and relied on by this court in *Blennerhasset* v. *Sherman*, 105 U. S., 100.

See also to the same effect numerous cases cited *supra*, pp., 52-60.

So Bigelow says in his leading work on Fraud:

"It is not uncommon, however, to speak of cases in which "there is an absence of any personal intention to defeat "creditors as cases of 'constructive fraud.' The main ob-

"jection to the term is that it suggests, if it is not founded "upon the notion that the 'intent' of the statute is in reality "a personal intent. In so far as it may be designed to indi- "cate that the court disclaims the purpose of *fastening a "stigma upon the debtor,* where his conduct was not base, "the use of the term, or of its cognate, 'legal fraud,' is well "enough. But when the *effect* of intended fraud in the pop- "ular sense is produced, it is for legal purposes confusing "and misleading to speak of the act as something short of "fraud."

2 Bigelow on Fraud, pp. 378-379.

Again, it is said in Wait on Fraudulent Conveyances and Creditor's Bills, Section 8:

"The act may be adjudged covinous although the parties "deny all intention of committing a fraud, and it is not "necessary to impute to the parties '*a premeditated or "wicked intention to destroy or injure*' the interests of "others. A man may commit a fraud without believing it "to be fraud. The statute 13 Eliz., refers to a legal, and "not a moral intent; that is, not a moral intent as contra- "distinguished from a legal intent. It supposes that every "one is capable of perceiving what is wrong, and therefore, "if he does that which is forbidden, intending to do it, he "will not be allowed to say that he did not intend to do a "prohibited act. A man's moral perceptions may be so per- "verted as to imagine an act to be fair and honest which the "law justly pronounces fraudulent and corrupt. * * * "Whenever the effect of a particular transaction with a "debtor is to hinder, delay, or defraud creditors, the law "infers the intent, though there may be no direct evidence "of a corrupt or dishonorable motive, but on the contrary, "an actual honest motive existed. The law interposes, and "declares that every man is presumed to intend the natural "and necessary consequences of his acts: and the courts "must presume the intention to exist when the prohibited "consequences must necessarily follow from the act, and "will not listen to an argument against it. Hence it has

" been remarked that where a conveyance by its terms oper-
" ates to hinder, delay, or defraud creditors, the intent to do
" so is imputed to the parties, and no evidence of intention
" can change that presumption. A different intent cannot
" be shown and made out by the reception of parol testimony,
" nor deduced from surrounding circumstances."

Ib., Sec. 9.

To the same effect see

Pierce on Fraudulent Mtges. of Mdse., p. 5, Sec. 3.

It is shown by this record, that the arrangements made were put in the form which they actually assumed, because that was *the only form* in which the results desired could be accomplished and yet kept secret; that the methods used were adopted *for the purpose* of keeping the arrangements secret, in order that credit might be obtained, and that they were in fact *kept secret* and credit in fact secured. (Statement, *supra*, pp., 22-23.)

Under the authorities, therefore, the whole scheme " was
" fraudulent as to subsequent creditors as much so as if it
" had been contrived with that motive and for that object."
But a scheme contrived with " that motive and for that ob-
" ject " would be within the strictest meaning of the term
" actually fraudulent."

To repeat the language of Bigelow, " It is for legal pur-
" poses confusing and misleading to speak of the ' scheme '
" as being something short of fraud. It is ' actual fraud.' "

IV.

By the January Scheme the Rubber Companies in Fact and in Equity Usurped Secret Control of the Fargo Company and Thereby Assumed the Fiduciary Relation of Directors.

The seemingly serious contention found in Respondents' brief that Mr. Beale's five clerks were independent directors, and were not mere dummies for the Rubber Companies, shows to what extremes counsel have been driven. The record discloses the fact that these five directors were young law clerks in his office and used by Mr. Beale, who had exclusive charge of all these arrangements and dealings, for the express purpose of effectuating his clients' ends; counsel expressly recognized that he was personally responsible for the acts and conduct of these young clerks; that they followed implicitly the orders given by Beale, or his representative, Porter; that the only time when a performance by them of any affirmative act was discussed, Beale expressly stated that he had no power to pass on the question, and that the Rubber Companies alone could determine the matter; that only after this action was agreed to by the Rubber Companies themselves, did these dummy directors perform the act in question, and then simply registered the volition of the Rubber Companies on the subject. (Statement, *supra*, p., 40.)

Nor is there any merit in the claim that these dummy directors were to do nothing, and in fact did nothing. If this were true, such pre-determined non-action would amount to affirmative action, and an affirmative breach of a trust imposed upon them as directors, to the advantage of

their employers, and to the prejudice of other creditors. But the fact is that when the final collapse came, when the emergency occurred to meet which this machinery was created in January, these directors did act affirmatively, for the direct benefit and upon the order of the Rubber Companies. They were called in by Porter, and by his orders, voted the judgment notes and the conveyance of the Dixon plant to the Bank, both of which were for the direct benefit of the Rubber Companies, and constituted a direct preference to them; for at the time these things were voted, a solemn written agreement had been entered into between the Rubber Companies and the Bank, expressly providing that the Rubber Companies should share *pro rata* in the proceeds of the Dixon property and the Bank's judgment. (Statement, pp. 40-43.)

To sum up, the avowed object of the arrangement, the admitted method of accomplishing this object, and the conceded results, were precisely the same as if the Rubber Companies had fraudulently and secretly constituted themselves directors of the Fargo Company, for the sole purpose of secretly controlling the volition of that company for their own benefit, and thereby secretly holding all its assets within their grasp, and at the proper time seizing and appropriating these assets to their own use and benefit. The Rubber Companies were corporations, and therefore could not directly assume the office and function of directors. Moreover, they did not dare permit any of their own personal employes to assume this relation, lest the essential element of secrecy might be impaired. The objects and results aimed at could have been accomplished by the method adopted, and by no other.

"The situation here may be summed up in the words of "Vice Chancellor Kindersley in *Attorney General* v. *The*

"*Northern Railway Co.*, 1 Drew & S., 157, 6 Jur. N. S., "1,006, 29 L. J., 794: 'A more flimsy device, when the "particulars are once known, it is impossible to imagine. "* * * It must not be thought that courts are power- "less to strip off disguises that are designed to thwart the "purposes of the law; the mere suggestion of such a con- "dition is an insult to the intelligence of the judiciary: "whenever such disguises are made apparent, they can "readily be disrobed. The difficulty is in showing the dis- "guises, not in penetrating them when they appear.'"

Stockton v. *Railroad Co.*, 50 N. J. Eq., 75; 17 L. R. A., 107.

See particularly the opinion, rendered February 23, 1897, by Mr. Justice Wallace, sitting in the Circuit Court of Appeals for the Second Circuit, in

Siddel v. *Missouri Pac. Ry. Co.*, 78 Fed., 726.

Where it is said:

"When a majority of the stockholders of a corporation "combine to effect some predetermined scheme of corporate "action, and by their vote select a body of directors to carry "it out, they practically constitute themselves the corpora- "tion for that particular object, and assume the fiduciary "relation which the directors themselves occupy. *Ervin* v. "*Navigation Co.*, 27 Fed., 625; *Farmers' Loan & Trust Co.* "v. *New York & N. Ry. Co.*, 150 N. Y., 410, 44 N. E., "1043. The same result follows when one individual, or a "corporation, exercises this control by its majority voice and "vote. If the corporation is insolvent this trust relation "towards creditors forbids the majority stockholder from "appropriating for his own advantage the property or fund "in which all have a community of interest. *Jackson* v. "*Ludeling*, 21 Wall., 616."

So in a leading case in Michigan, Chancellor McGrath said:

"Defendant Lorman must be held to have made these "contracts with himself. He directed, influenced and con-

"trolled the board. They had no personal interest in the "affairs of the company, and exercised not their own judg- "ment and discretion, but Lorman's will. * * *"

Miner v. *Belle Isle Co.*, 17 L. R. A., 412; 93 Mich., 97.

See also

Ervin v. *Oregon Railway and Navigation Co.*, 27 Fed. Rep., 625.

Chicago Hansom Cab Co. v. *Yerkes* (Ill.), 30 N. E. Rep., 667.

Woodruff v. *Howes*, 26 Pacific Rep., 111.

Meyer v. *Staten Island Co.*, 7 N. Y. State Rep., 245.

1 Beach Corp., 276.

Smith v. *Los Angeles Imm. & L. C. Asso.*, 78 Cal., 289.

San Diego v. *San Diego & L. A. R. Co.*, 44 Cal., 106.

Bill v. *Western Union Teleg. Co.*, 16 Fed. Rep., 14.

Copeland v. *Johnson Mfg. Co.*, 47 Hun., 235.

Davis v. *Memphis City R. Co.*, 22 Fed. Rep., 883.

Sellers v. *Phoenix Iron Co.*, 13 Fed. Rep., 20.

Currier v. *New York, W. S. & B. R. Co.*, 35 Hun., 355.

Jackson v. *McLean*, 36 Fed. Rep., 213.

There is absolutely nothing in the cases cited by counsel for the Rubber Companies on this point which militates against our position.

In *Porter* v. *Pittsburg Bessemer Steel Co.*, 120 U. S., 649, the Supreme Court held *that as a matter of fact,* Crawford did not control the board of directors, and cited as evidence of this fact, *that the board of directors refused to ratify the contract which Crawford presented to them.*

So likewise in *Higgins* v. *Lansing*, 154 Ill., 355, the court

say that the directors "were voted in by a certain party, who "had no control over them after they were voted in."

Moreover, in the *Higgins* case, the persons who were charged with controlling the directorate, were not outside creditors, but were stockholders themselves, and simply exercised their rights and powers as stockholders to elect directors and the complainants likewise were not creditors, but merely co-stockholders.

Pullman Car Co. v. *Missouri Pacific Co.*, 115 U. S., 587, has no bearing on the facts of this case.

Kitchen v. *St. L., etc., Ry.*, 69 Mo., 224, is also in no respect in point. There was no contest there between creditors. The complainants were mere stockholders attempting to attack an arrangement which had been *openly* made, and acquiesced in for a long period of time.

V.

Having Assumed the Fiduciary Relation of Directors, the Burden is on the Rubber Companies to Show That They Acted in Good Faith.

Petitioners, at various stages in their brief, contend that being charged with fraud, the Respondents must, at the threshhold, establish that charge by direct and positive proof. We earnestly believe that we have more than done this. But we challenge the correctness of counsel's legal position.

We have shown (Division IV of this argument), that the Rubber Companies were directors to all intents and purposes, and thereby necessarily assumed the duties and responsibilities of that office. Mr. Justice HARLAN, in *Sutton Mfg. Co.* v. *Hutchinson*, 11 C. C. A., 320, discussed this proposition at some length, and held, that: "in cases "of that kind" (security given to directors), "a court of

"equity will closely scrutinize the transactions, and in a "contest between general creditors and a director or man- "aging officer who takes a mortgage upon the property, will "hold the latter to *clear proof that the mortgage was exe- "cuted in good faith, and was not a device to enable him to "obtain an advantage for himself over those interested in "the distribution of the mortgagor's property.*"

In the well-considered case of *Wilkinson* v. *Bauerle*, 41 N. J. Eq., 645, the Chancellor held that: "When directors "make sale of corporate property to one of their number, "who takes part in the transaction as both buyer and seller, "and creditors are thereby deprived of the opportunity to "enforce their debts, then it results from the relation * "* * existing between them and the creditors, *that it "devolves on the directors to show that the transaction was "made in good faith.* * * * If they fail to show these "facts, creditors are entitled to compel them to account for "the full value of the property."

It must be true that when a director, claiming to be a creditor, obtains an advantage, by way of preference, or otherwise, over other creditors and the transaction by which he obtains such preference is challenged, it becomes his duty in the first instance, to show that he acted in good faith, and the burden is upon him to do so.

This is only the application of a familiar rule which needs the citation of no authorities. Whenever an attorney, or solicitor deals with his client, and the transaction is afterwards challenged as fraudulent, or when a trustee deals with the beneficiary under the trust, or when any individual, or officer occupying a fiduciary relation, deals with the subject matter in his keeping, the law casts upon him the burden of showing that the transaction was *bona fide*, just and

equitable. We invoke this rule and respectfully insist that it applies to the Rubber Companies under the facts and circumstances of this case.

VI.

The Rubber Companies are Legally Responsible for and Chargeable with the Fraudulent Representations and Other Deceits Practiced by the Fargos after January 6, 1896.

The fraud perpetrated by the use of printed letter heads containing false statements as to the officers of the company is directly brought home to the Rubber Companies by the fact that these letter heads were used by the Fargos in their correspondence with the Rubber Companies themselves. (*Supra*, p. 30.)

Moreover, the evidence establishes a deliberate combination between the Fargos and the Rubber Companies to the end that the Fargos should be ostensibly held out to the world as occupying their former relation to the company, and any and all acts of each party in furtherance of such a conspiracy are directly chargeable to all the others.

So, too, the evidence establishes a combination between the parties to uphold the credit of the Fargo Company at all hazards. All agreed that the January scheme should be kept secret in any event. The judgment notes given to the Rubber Companies constituted one of the essential elements of this scheme, and all the parties knew that this item in the arrangement must be included in the general plan of secrecy. The Rubber Companies must have understood and expected that the Fargos were likely, indeed certain, to make statements to the commercial agencies and to individual creditors as a basis of new credit and to

procure extensions of old and new debts. They knew that one of the first questions asked would be, "Have you any "judgment notes out?" It must also have been understood and expected that the Fargos, when so interrogated, would conceal and even deny the existence of such notes. The very agreement for secrecy in itself afforded an opportunity and inducement, amounting almost to a demand, that false statements should be made. It is not surprising, therefore, that under such circumstances the Fargos should have made false representations as to their assets and liabilities, and the existence of the judgment notes. Speaking of a similar state of facts, the Supreme Court of Colorado (*Walton* v. *Bank*, 13 Colo., 265) well said:

"The effect of the combination was that no other creditor, "however diligent he might be, however honest or old his "claim might be, could have access to any of the property of "Howard P. Walton, to the detriment of E. T. Walton, and, "the evidence showing the existence of the confession of "judgment, the agreement to keep it from the public was, "in my opinion, sufficient to establish a confederation be-"tween the two which would admit the acts and declarations "of one against the other."

Accordingly the court held the creditor brother chargeable with the false representation of the debtor, saying:

"It is said by Mr. Justice WASHINGTON, in delivering the "opinion of the court in *Fur Co.* v. *United States*, 2 Pet., "365, that, 'where two or more persons are associated to-"gether for the same illegal purpose, any act or declaration "of one of the parties, in reference to the common object, "and forming a part of the *res gestae* may be given in evi-"dence against the others.'"

"Howard Walton, relying on his brother's agreement not "to make the confession of judgment public, could with "great assurance make the fraudulent representations to the "cashier of the bank that his brother had no security, and

"was not pressing him. Without such agreement he would "feel that judgment was likely to be entered against him "at any time, and this would have a tendency to restrain "him in his dealings with others * * * (p. 277.)

Walton v. *First Natl. Bank*, 13 Colo., 265.

But we need not indulge in argument on this subject. The record is not lacking in direct evidence that the Rubber Companies actively assisted the Fargos in their course of deceit and misrepresentation. We refer of course to the method adopted by Mr. Fargo in the middle of July to secure an extension from the Bank. Mr. Beale's own testimony on this subject is as follows (Rec., 561):

"I am under the impression that some time in the middle "of July he (Fargo) came in and told me that Mr. Keith "had told him to pay the note coming due at that time, and "he could not go to Mr. Keith and explain why he could not "pay it, because there would be some embarrassing ques- "tions asked, and finally it was decided by him, as I remem- "ber it, at that interview with him, but whether on my ad- "vice or not I am unable to say, that he would just put a "new note in a letter and write to Mr. Keith, in order to "have the entire information contained in the letter and not "have to answer any embarrassing questions. I think this "was done."

But the situation disclosed by this record makes out a much stronger case against the Rubber Companies than that under discussion in *Walton* v. *Bank, supra.* By the election of these dummy directors the Rubber Companies, in fact, secured absolute control of the corporate powers and volition of the Fargo Company, secretly and in bad faith, in order to effectuate their own secret and selfish ends. Having usurped these corporate powers, they immediately called the dummy directors together, and, on January 9th, caused them to re-elect Charles E. Fargo president and Frank M. Fargo

vice president of the Fargo Company for the ensuing year. (Rec., 65.)

By verbal understanding between the Fargos and Mr. Beale, Frank M. Fargo was to cease to be treasurer, but to "act" as treasurer. (Rec., 570.) THAT IS, HE WAS TO HOLD HIMSELF OUT TO THE WORLD AS THE TREASURER. This amounted to nothing less than the employment by the Rubber Companies of the Fargos, as their agents, to carry out a scheme the primal element of which was the preservation of the credit of the Fargo Company. Mr. Beale himself says: "*The three Fargos were to run the business, just as everybody knew they had previously run it.*" (Rec., 569.) Having thus launched their scheme, having affirmatively installed the Fargos as the ostensible heads of the company, having clothed them with unlimited powers, under an arrangement designed to preserve, at all hazards, a fictitious credit for the company, can it be questioned that the Rubber Companies are responsible, legally and equitably, for every act of the Fargos in utilizing these powers to effectuate such wrongful ends?

In the case of *Allen* v. *Bank of Commerce*, the Circuit Court of the District of Colorado, relying upon Judge Grosscup's first opinion in the case at bar (*U. S. Rubber Co.* v. *American Oak Leather Co.*, 77 Fed.,671) held that the Bank of Commerce was liable for false representations made by the Mercantile Company, a Colorado corporation. The case was appealed to the Circuit Court of Appeals for the 8th Circuit, and the decision of that court is found reported as *Bank of Commerce* v. *Allen*, 90 Fed., p. 545. The decree below was reversed, but the Court of Appeals in its opinion dwells at length upon the facts disclosed by the record in the *Allen* case, for the purpose of demonstrating that the facts were essentially unlike the facts in the case at bar as stated

in Judge Grosscup's opinion. The striking feature, say the court, wherein the two cases differed, consisted in the circumstance that in the *Allen* case the Mercantile Company was in control of its own board of directors, and not in fact under the power of the Bank of Commerce. Judge Thayer in effect says that if the Bank of Commerce had controlled the board of directors of the Mercantile Company, as the Rubber Companies controlled the Fargo board, the Denver bank would have been responsible for the false representations made by the president of the Mercantile Company.

The law is settled that every partner is personally responsible for false representations made by his copartners in the course of the partnership business. This rule is carried so far that an innocent partner may be sued for the deceit of his copartner, perpetrated without his knowledge, and be imprisoned upon a judgment so recovered in an action where imprisonment is permitted.

The best that can be said of the relations between the parties in this case is that the Rubber Companies became practically copartners of the Fargos in this fraudulent scheme, and in pursuance of this partnership, caused the dummy directors to clothe the Fargos with the power to make the false representations which they made to the American Oak Leather Co., to the Dixon banks, to the Pfister & Vogel Leather Company, to the Mercantile Agency, etc. (Statement of facts, *supra*, pp. 29-34.) The fraud of the Fargos in making such representations must be imputed to their partners or employers, the Rubber Companies. The Fargos being conclusively shown to have been guilty of gross fraud and deceit, the Rubber Companies must be held chargeable with the same fraud and deceit.

1 Bigelow on Fraud, 247.

Wolf v. *Pugh,* 101 Ind., 305, and numerous cases there cited.

Bennett v. *Judson,* 21 N. Y., 239.

Mechem on Agency, Sec. 739.

The false representations made by the Fargos to obtain credit after January, color and characterize the January scheme itself, and demonstrate that it was conceived in wrong and executed in fraud, and that the fraud in its execution, as well as the fraud in its conception, are directly chargeable to the Rubber Companies themselves.

In the case of *Blennerhassett* v. *Sherman,* 105 U. S., 118, the Supreme Court called attention to the false representations as to the mortgagor's credit, made by the mortgagee, during the time the mortgage was kept secret, and held that these false representations were sufficient in themselves to taint the whole transaction and all its elements with actual fraud.

So likewise in the case at bar the false representations made by the Rubber Companies through their partners and tools, the Fargos, are enough in themselves to convict the Rubber Companies of actual fraud throughout the whole transaction.

VII.

The Petitioners Contend that the Creditors of the Fargo Company as a "Class" or "Collectively," were in as Good, if not a Better Position after, than They Were Prior to the Launching of the January Scheme.

This contention is made at page 21 of Petitioners' brief. Its absurdity will at once be manifest by a consideration of the actual facts. In our statement of facts, pages 38-39 of this

brief, we have shown the fallacy of the Master's conclusion, that the indebtedness of the Fargo Company to what are called the "general creditors" (creditors other than the Rubber Companies and the Bank), was materially reduced during the period from January to August, 1896. The Master finds (Rec., 163) that on January 6, 1896, there was $210,216.20 owing to creditors other than the Rubber Companies, the Bank, and the creditors who held the notes of the Fargo Company upon which the Fargos themselves were guarantors, and from which they so dexterously escaped personal liability.

In his preliminary report dated May 29, 1896 (Rec., 136), the Master, who was and is likewise the Receiver, found that the claims actually filed with him as such Receiver, by creditors other than the Petitioners, amounted to $180,037.53. The claims of "general creditors" allowed by the final decree, amounted to $160,403.65, and this, in the teeth of the *Master's final report, finding that the indebtedness in August was only $142,000.* Here is a discrepancy of nearly $40,000 between the fact, and what the Master finds the fact to be. But this error of the Master is only another illustration of the many errors to be found in his final report, to which we have directed attention in our statement of facts.

This discrepancy between the final decree and the claims filed with the Master while acting as Receiver under the order of Court, is due to the fact that a large number of claimants failed to pay their *pro rata* assessment of the costs of this litigation, and were therefore, barred by the decree from sharing in the fund. (Rec., 136.) The claims actually filed with the Master in his capacity as Receiver amounted, as we have said, to $180,037.53. In a matter of this magnitude, where there are hundreds of creditors scattered

all over the country, it is fair to assume that a considerable number of claims existed which were not filed, either through ignorance, or indifference on the part of the claimants, or disinclination to join in the litigation and share in its risks, hazards and expense. This is not infrequent. In litigation of this character, creditors frequently stand by and permit a handful of fellow creditors to carry on the litigation at their own expense, and hope to share in the victory without incurring any of the risks or costs. In this very case the Master, acting as Receiver, in his report of April 28, 1897, mentions two claims aggregating $1,392.55, which he did not include in his list or report as Receiver, because they had come to him too late under the order of court. (Rec., 133.) To this aggregate must be added the claims for mechanics' liens on the Dixon plant, which were so large that the Bank abandoned the property for which it had paid $25,000 shortly prior thereto, rather than redeem from such liens. Under the circumstances, it is fair to fix these liens at $25,000.

Taking then, the claims actually filed, the mechanics' liens on the Dixon property, and said two claims which came too late ($1,392.55), *we have a total of the "general indebtedness" on August, 6, 1896, of $206,430.08*, instead of $142,000, as found by the Master in his final report; a discrepancy of $64,430.08. Now add to said $206,430.08 a reasonable percentage of claims not filed for the reasons hereinbefore stated, and we show to a demonstration, that the *indebtedness of the Fargo Company when the final collapse came in August, exceeded the indebtedness of the company when the January scheme was conceived and brought into life.*

And even if the facts were as claimed by Petitioners, it

is difficult to understand how our clients would have been in any way benefited.

Take the case of the American Oak Leather Company, whose claim was increased from $3,500, when the January scheme was created, to over $12,000 in August. Take the case of the Pfister & Vogel Co., Wilder & Co., and the Eagle Tanning Works, likewise judgment creditors and Respondents here. The Master finds that the claim of the Pfister & Vogel Co. was $17,557.90; the claim of Wilder & Co. $4,584.95; and the claim of the Eagle Tanning Works $2,500.24, and that all three claims were wholly created after the January scheme was put into full operation. (Rec., 165.) Neither the American Oak Leather Company, Pfister & Vogel Co., Wilder & Co., or Eagle Tanning Works, had ever in any prior year given credit to the Fargo Company for more than one-third of the credit given after the January scheme was launched.

Take the claim of the two Dixon banks amounting to $17,000. The money was borrowed in February, 1896, by means of the grossest fraud and deception perpetrated by Frank M. Fargo, who was then falsely held out by the Rubber Companies as the actual treasurer of the Fargo Company. Prior to this time the Dixon Banks had never loaned the Fargo Company a single dollar. (Rec., 303-305, 316.)

In passing, it is proper to remark that Mr. Beale earnestly urged Fargo to borrow no more money from the Metropolitan Bank, on the ground that if he did so, *the Bank might justly claim that under the January scheme, it had been deceived.* (Rec., 563-4, and *supra*, p. 55.) But the Rubber Companies and their counsel seem to think it per-

fectly proper for the Fargos to borrow $17,000 from the Dixon banks by means of shockingly false representations, and not a word of condemnation for this conduct do we find in opposing counsel's brief. On the contrary, they ask this court to believe that the Fargos are honest men.

We respectfully ask the court, is the situation of the foregoing creditors in any way improved, or can their equities be in any way affected by the results to some other creditor, or to the creditors "as a class," taken "collectively?" The six Respondents hereinbefore named, pray this court to consider their situation, and the losses they have sustained, by the wrongful conduct of the Petitioners. The best that can be said for the Petitioners on their own theory, is that they were fraudulently experimenting with the property of the "general creditors."

The fact that neither the Rubber Companies, nor the Bank gave a dollar of credit to the Fargo Company after the January scheme, in our judgment, is one of the most striking features in the case. Beyond the purchase price of $50,000 loaned (in the form of the Candee Co. plain notes) to secure the fraudulent preferences, not a dollar was advanced, or intended to be advanced to the Fargo Company to save it from *going to the wall.* On the contrary, it was expressly provided by the January scheme that either this $50,000 advanced in notes, or the $44,900 due the Candee Company must be paid at all hazards as the notes matured. *As a direct result, substantially every dollar advanced by the Rubber Companies in January had been returned to them by the following May;* returned under conditions which the Rubber Companies must have known were depleting the treasury of the Fargo Company, and would make it impossible for the Company to continue in business.

If there were nothing else in this record showing that this pretended loan of $50,000 was not made in good faith, and was not made to help the Fargo Company tide over its "temporary embarrassments," Fargo's letter to Sadler shows how utterly impossible it must have been for the Fargo Company to pay back said loan of $50,000 in four months, and at the same time continue its business, with the slightest hope of pulling through. That letter is as follows (Rec., 581):

"CHICAGO, April 27, 1896.

"*Mr. H. M. Sadler:*

"** * * The receipts this month which are one-third "less than our calculations, and 40 per cent. less than in "the same time last year; this is likely to continue * * "* This, of course, contemplates the payment in cash as "fast as collected for present and future sales. We have "now paid about $40,000 of your notes just matured, and "have $5,000 to pay next month, which shall be paid out-"side foregoing. We are pushing hard on old accounts. "but they come in very slowly. * * **

"C. H. FARGO & Co.
"By Charles E. Fargo."

A business house whose current indebtedness is over $400,000 as was that of the Fargo Company in April, with assets considerably less, and whose receipts are "*one-third less than its calculations,*" and "*40 per cent. less than in the same time last year,*" can not, without extraordinary help, hope to pull through. Johnson and Sadler, astute and experienced business men, representing one of the great industrial combinations of this country, must have known this to be literally true. In the preceding January, the Fargo Company was so hard pressed, and its assets so unavailable for the payment of current obligations, that if $10,000 had not been advanced on January 6, according to the admis-

sion of all parties to this litigation, it would have been compelled to close its doors. Notwithstanding this terrible pressure and the great reduction in collections and receipts, the Rubber Companies were relentless in their demands that their claims should be paid, while the demands of other creditors were in every possible instance postponed and extended. (Rec., 582.)

Within a period of four months, the Rubber Companies got back $45,000, as shown by said letter. Had the Rubber Companies been the most aggressive of creditors, instead of helping the Fargo Company tide over its "temporary embarrassments," as they now pretend they were doing, they could not have been more persistent and grasping in collecting their demands.

In the light of these facts, how is it possible for this court to ever find that the Rubber Companies loaned their credit to the extent of $50,000 in January for the purpose of helping the Fargo Company over its "temporary embarrassments," when the record shows, without dispute or controversy, that they were forcing the Fargo Company to pay, with a rigor which could not have been exceeded by the most unfriendly creditor.

VIII.

As to the Effect of the Master's Report.

Counsel suggest at page 14 of their brief, that the Master's findings should be accepted as presumptively correct, and not be set aside unless clearly wrong, on the ground that the cause was referred to the Master to take proofs and report the same together "with his conclusions thereon as to the "facts only."

In support of this contention counsel cited in the court

below, *Bosworth* v. *Hook*, 77 Fed. Rep., 686, and *Boesch* v. *Graff*, 133 U. S., 705, but have abandoned these authorities and now cite *Crawford* v. *Neal*, 144 U. S., 585, and *Davis* v. *Schwartz*, 155 U. S., 631.

In the *Bosworth* case, the proceeding there under review, was an intervening petition filed against a receiver. On the latter's motion the Circuit Court had "ordered a refer- "ence to a Master to hear evidence and report the same to "the court with his conclusions thereon." The Master reported *adversely to the receiver*, who filed exceptions *which the Circuit Court overruled*, and entered judgment in favor of the petitioner. In disposing of the case, the court said:

"There is, therefore, no ground upon which she (the pe- "titioner) can have a demand against the receiver, or against "cars or other property of the railway company in his pos- "session.

"In reaching this conclusion, which we deem it sufficient "to announce, without going into the details of evidence, "we have not been unmindful of the rule, often stated and "reiterated, that the findings of a Master, concurred in by "the court to which they were reported, are presumptively "correct and will be permitted to stand, unless obvious error "of law or important mistake of fact has intervened. *Fur- "rer* v. *Ferris*, 145 U. S., 132; 12 Sup. Ct., 821; *Crawford* "v. *Neal*, 144 U. S., 585; 12 Sup. Ct., 759; *Walker* v. *Kin- "nare*, 76 Fed., 101. *When, as in this case, the reference "was made upon motion of one of the parties and not by "agreement of both, the Master's finding has not the force "of a verdict, or of the report of a referee, and, on excep- "tions thereto, the court must determine by its own judg- "ment the controversy presented (Kimberly* v. *Arms*, 129 "U. S., 512; 9 Sup. Ct., 355); *and, on appeal, the court of "review, of course, has the same power and responsibility.*

"*The decree of the Circuit Court is reversed, with direc- "tion to dismiss the petition.*"

So in *Boesch* v. *Graff*, 133 U. S., 705, the Supreme Court, by Mr. Chief Justice FULLER, said:

"*The report of a Master is merely advisory to the court,* "*which it may accept and act upon in whole or in part, ac-* "*cording to its own judgment* as to the weight of the evi- "dence. *Kimberly* v. *Arms*, 129 U. S., 512, 523. Yet, in "dealing with exceptions to such reports, 'the conclusions "of the Master, *depending upon the weighing of conflicting* "*testimony*, have every reasonable presumption in their "favor, and are not to be set aside or modified unless there "clearly appears to have been error or mistake on his part.' "*Tilghman* v. *Proctor*, 125 U. S., 136, 149. We think there "was error here within that rule."

Boesch v. *Graff*, 133 U. S., 705.

Upon examination of *Crawford* v. *Neal*, 144 U. S., 585, the court will find that it was a hotly contested case, where there was a great volume of testimony taken, and where an irreconcilable conflict existed in the testimony. It may be true that in such a case it is wise for the court to indulge in the presumption that the conclusions of the Master, before whom the witnesses appeared, and who stood "in the midst of the storm" while the testimony was being taken, ought, in the first instance to be taken as presumptively correct, unless some obvious error has intervened, etc.

As we have already said, there was absolutely "*no conflicting testimony*" to be weighed by the Master in the case at bar, and therefore, the reason of the rule that "every reasonable presumption in favor of the "Master's conclusions shall be indulged in," does not exist, and has no application here. In short, the conclusions of the Master in this case are substantially nothing but the simple statements of the witnesses themselves, culled out and put in historical order for the convenience of the court.

The Master was not called upon at any stage to weigh conflicting testimony, or conflicting facts, because none existed.

The court will remember that the history of the January scheme and the collapse of the Fargo Company is found solely in the testimony of the Petitioners and their representatives, who certainly may be presumed to have given the subject the best possible coloring.

IX.

The Metropolitan National Bank Ratified and Shared in the January Scheme when the Collapse came in August, and then and there Deliberately Helped the Fargos as Officers and Directors of the Fargo Company to Loot its Treasury to the Extent of at least $10,000.

There are three propositions to be considered with respect to the rights and responsibilities of the Bank in this case:

1. The Bank knowingly adopted, ratified and assisted in consummating the January scheme, and thereby became chargeable with all the fraud of the Rubber Companies. On this proposition all the Judges who have considered this case, namely: Judge Grosscup of the Circuit Court, Judges Woods, Jenkins and Showalter (deceased), of the Court of Appeals, and Mr. Justice Brown of this court, are agreed. Mr. Justice Brown and Judge Grosscup held that the Rubber Companies and the Bank were guilty of constructive fraud, and Judges Woods and Jenkins held that they were guilty of actual fraud. In the opinion of the Circuit Court of Appeals in the first appeal (82 Fed. Rep., 248), the court held it was not necessary then to determine whether there was, or was not actual fraud, and therefore, the record does not show Judge Showalter's judgment on the question of actual fraud.

2. The advance of $10,000 was made with the knowledge that the corporation was then failing, that the money was to be used for the sole personal benefit of the Fargos, and was being paid as a price to induce its officers to give the Bank a security to be used against the other creditors; this tainted the entire transaction and made it actually corrupt and fraudulent.

3. The cancellation of one of the $25,000 judgment notes in consideration of the transfer of the Dixon plant, was not procured by any fraud or misrepresentation on the part of the Fargo Company, but was done by the Bank advisedly and in fact, at its solicitation. The debt having been actually discharged as between the parties, the Bank could not—even in a contest between it and the Fargo Company—enforce that part of its claim; therefore the Bank can not enforce as against complainant and the intervening petitioners (Respondents here) a claim which could not be enforced against the Fargo Company itself.

WHAT WAS THE EFFECT OF THE PAYMENT OF THE $10,000 TO THE FARGOS?

Of the main facts with reference to the purpose for which this $10,000 was paid, there is no dispute whatever; the effort on the part of the defense being merely to palliate in some way, the bare-faced fraud, which Fargo's testimony showed had been committed.

Fargo testified that he told Mr. Keith that his company was about to fail, that he and his brothers needed money to live upon, and that if the Bank would advance $10,000 for that purpose, Fargo would give the company's judgment notes for this and the $40,000 already owing the Bank, making $50,000 in all, and put them on an equality with the Rubber Companies. (Rec., 191-2, 195-6.)

Cross examination by the counsel for the Rubber Companies failed to produce any substantial change in this testimony: on the contrary it was reiterated. (Rec., 265.) Whatever else may be said of Mr. Fargo in this case, it certainly can not be charged that he is unduly favorable to Respondents, or interested in warping his testimony in the slightest degree to assist them.

On the part of the defendants the only attempt at controverting these facts was by having Mr. Keith deny that Fargo told him he wished the money to live upon. But Mr. Keith's version of the interview showed that he was told that the money was to be used for the personal benefit of the Fargos, by taking up their individual notes secured by a pledge of their individual collateral; Fargo telling him that the money raised on those notes had been in some way put into the business. (Rec., 389.) No attempt was made to prove an actual indebtedness from the company to any one of the Fargos, except by asking Chas. E. Fargo, on cross-examination, the general question whether it was true that the company owed him and his brothers $10,000. (Rec., 265.) Nothing was shown as to when the money was advanced by them to the company, which one advanced it, for what purpose it was used, or anything with reference to the transaction in any way, not even a statement that the money had not been repaid to them. The entire matter was left upon the mere statement of Fargo's conclusion, that the company was indebted to him and his brothers in some amount exceeding $10,000.

It obviously makes no difference in the result, that the Fargos intended to use this money to take up individual notes secured by their individual collateral. That was but the method by which they sought to use it for their personal ends. The harm was done when they received the money.

When they had paid those notes it would give them back their bank stock, which was of more value than the amount of the notes, and thus give them a still greater advantage than would result from merely keeping the money. But the effect upon the situation, and upon the rights of the creditors of the corporation, was precisely the same.

We have it, then, conceded that the Bank advanced this money for the purpose of personally benefiting the Fargos at the expense of the creditors of the corporation; that it had no information of the existence of any debt from the company to the Fargos except what it got from Fargo himself, who was concededly acting in his own interest and could not bind the corporation by his admissions. Without any further inquiry, the Bank paid him the money; and that inquiry would not have developed anything beneficial to the defense in this case, is clearly shown from the fact that no competent evidence of the existence of the debt was offered on the hearing.

The claim that the money was paid to the company at all is a mere pretense, having no other basis or color of truth than arises from the bare fact that Fargo was president. He never paid it over to the company; he simply handed over the company's note and kept the money himself, just as Mr. Keith knew he intended to do. When objection was made, on the hearing to his statement that the corporation received and paid out the money, as calling for his conclusion, and he was asked to state what was actually done with the money, he answered as follows, the questions quoted being put to him by Mr. Beale:

"Q. What was actually done with the money? A. The "money was divided between my brothers and myself fin-"ally.

"Q. By the corporation? A. By the corporation.

"Q. For what reason? A. Because the corporation "owed it to us; because we had to have some money to live "on and the corporation owed it to us.

"Mr. Newman: You do not mean the corporation owed "you a living?

"The Witness: No; *I do not mean to put it that way.*

"Q. (By Mr. Beale.) On what ground did the corpora- "tion owe you the money? A. For money actually "loaned it.

"Q. *Have* you and your brothers loaned them as much "as $10,000? A. Yes; more than twice as much." (Rec., 265.)

We have quoted this at length, because it is the only attempt at proof of the actual existence of an indebtedness from the corporation to the Fargo brothers. And the court will at once notice that it is limited to a bare statement that the total advances made to the company exceeded $10,000, with no information as to what payments had been made, or what balance, if any, remained unpaid. The transaction was—to put it very mildly—suspicious to the last degree, and called loudly for explanation. The facts were—on the theory of good faith—susceptible of statement with mathematical precision; the witness who knew all about them was on the stand and being cross-examined by the side, and by the counsel, to which he was friendly and with which his interests were allied. Under these circumstances, the industrious failure to put in evidence any of the actual facts with reference to this alleged debt is strikingly significant.

If the Fargos, one or all, were now suing the company to recover this indebtedness, would the court, on this evidence, enter judgment in their favor? Clearly not.

We have characterized the claim that the $10,000 advanced by the Bank was paid to the Fargo Company and by it divided among the brothers as a mere pretense; but in

view of all the facts of this case it was worse than that. The pertinent question at once presents itself, who acted for the corporation? The money is conceded to have been paid by the Bank to Charles E. Fargo, and there is no statement in the evidence that any other officer represented the company in either receiving or disbursing the money. It is a plain proposition that he could not be both principal on one side and agent on the other, that he could not bind the corporation in a transaction with himself and for his personal benefit. For him to try to do so would of itself be a fraud.

And if we take his answer to the suggestive question of defendant's counsel, that the money was divided among the brothers "by the corporation," as meaning or proving, that the other ordinary corporate agencies participated in the transaction, so that it was in fact the act of the corporation and binding on it, the fraud becomes at once more glaringly apparent and far reaching in its consequences. Who and what were the other corporate agencies, the treasurer and secretary of the corporation, and its board of directors? The treasurer and secretary was Mr. Buell McKeever, a clerk in the employ of the Rubber Companies' counsel, who was elected with the understanding that he should perform none of the duties of his office. Did Frank Fargo, who was still falsely held out to the world as treasurer, bind the corporation by putting its funds in his pocket? If, so, there is no such thing as embezzlement. Clearly if the corporation was bound by this transaction, so that the receipt and disbursement of the $10,000 was a corporate act—we use the singular number with grammatical propriety—it was because the board of directors sanctioned it. That board was the mere instrument of the Rubber Companies, knowing no will or interest but theirs, and its members were bound to them by the relation of attorney and client. On the theory

that the money was received by the corporation, there is nothing to save its division among the Fargo brothers from being a barefaced looting of the corporate treasury but the claim that the directors sanctioned it. The responsibility for it thus rests directly upon the Rubber Companies. They and those who, through the exercise of the corporate functions of Fargo & Co., were seeking to accomplish their ends, issued the judgment notes by which alone was the money obtained, and either authorized or connived at its flagrant misuse. Mr. Porter, who was, in Mr. Beale's absence, acting as the chief counsel for the Rubber Companies at the time of the failure, both in entering the judgments, preparing the assignment of the accounts, and as a member of the board of directors of the Fargo Company, framing and passing the necessary resolutions, admits that he knew of Fargo's procuring the $10,000; that it was included in the judgment which he consented should share on an equality with those of the Rubber Companies, and so far from preventing it, says he did not even disapprove of it. (Rec., pp. 449, 450.)

As part and parcel of the arrangement under which this money was thus advanced to the Fargos, the judgment notes given and the property seized under them, the contract was executed between the Bank and the Rubber Companies, by which they agreed to *pro rata* all collections which either should make. By this agreement they bound themselves "to "*unite their efforts to collect their respective claims against* "*said company, and share pro rata in the results thereof.*" (Rec., p. 385.)

Here again, the Rubber Companies took upon themselves the responsibility of enforcing the collection of this $10,000 against the rights of the other creditors. And not only did they agree to assist in enforcing it, but, if the bank was unable to collect it, to share *pro rata* all that they collected

on their own judgments and from the accounts. In effect, though the Bank advanced the $10,000 in the first instance, the Rubber Companies thus agreed to contribute their share of whatever part of it was not collected out of the assets of the insolvent concern. What was the meaning and the object of this close and formal offensive and defensive alliance? Plainly they foresaw that in the litigation which the defrauded creditors were sure to institute, one of their claims, or a part of it, might be thrown out as fraudulent, and they wished both to secure mutual loyalty, and to provide that the loss resulting from that probable contingency should be borne by all who were interested in the common enterprise. It was an agreement by which each traded a share in his own fraud for a share in whatever redeeming element might be found in the conduct of the other. We submit that this $10,000 transaction can not, without an abdication of intelligent judgment, be regarded as anything but a payment from the Bank and the Rubber Companies directly to the Fargos for their personal benefit.

But if, blinding our eyes to the real facts, we look upon the money as paid to the corporation, then the distribution of it to the Fargos was equally fraudulent, even if it were shown that they had a just claim against the company.

It is a fundamental principle of equity that the officers and directors of a corporation hold its assets, and their power over its corporate actions, in trust for its creditors. From this principle arises the rule that they cannot so use their power over its assets to secure a benefit to themselves at the expense of the creditors for whom they are trustees. Hence upon the insolvency of a corporation the officers and directors cannot so use its assets as to prefer themselves over other creditors.

This rule was enforced by the Court of Appeals (7th Circuit) in the case of *Sutton Mfg. Co.* v. *Hutchinson*, 11 C. C. A., 320, in which the opinion was delivered by Mr. Justice Harlan.

In that case an insolvent corporation at the time of its failure, gave a mortgage to secure a debt to another corporation. The officers and directors of the two corporations were substantially identical, and forty per cent. of the stock of the mortgagee was held by two of the directors of the mortgagor. After speaking of the distinction between the right of preference on the part of an individual and a corporation, and the distinction between the mere security by a corporation to a director made in the ordinary course of business, and one made in contemplation of failure, Mr. Justice Harlan says:

"The contention of the defendants is that in disposing "of their respective properties an individual and a corpora- "tion were recognized at common law as having equal rights; "and as the former may, in the absence of a statute forbid- "ding it, transfer the whole or part of his property with the "intention or with the effect of giving a preference to some "of his creditors to the exclusion of others, so an insolvent "corporation when financially embarrassed and not intend- "ing to continue its business, may make a preference among "its creditors, whoever they may be, and whatever their rela- "tion to the corporation or to the property transferred. If "this be a sound rule, it would follow, that directors, being "also creditors, of an insolvent corporation, which has aban- "doned the objects of its creation and ceased an active ex- "istence, may distribute among themselves its entire assets, "if the reasonable value thereof does not exceed their aggre- "gate demands. We cannot accept this view. In our judg- "ment, when a corporation becomes insolvent and intends "not to prosecute its business, or does not expect to make "further effort to accomplish the object of its creation, its

"managing officers or directors come under a duty to dis-
"tribute its property or its proceeds ratably among all
"creditors, having regard, of course, to valid liens or charges
"previously placed upon it. Their duty is 'to act up to the
"end or design' for which the corporation was created (1
"Bl. Comm., 480) and when they can no longer do so their
"function is to hold or distribute the property in their hands
"for the equal benefit of those entitled to it. Because of
"the existence of this duty in respect to a common fund in
"their hands, to be administered, the law will not permit
"them, although creditors, to obtain any peculiar advantage
"for themselves to the prejudice of other creditors. This
"rule is imperatively demanded by the principle that one
"who has the possession and control of property for the
"benefit of others—and surely an insolvent corporation
"which has ceased to do business, holds its property for the
"benefit of creditors—may not dispose of it for his own
"special advantage to the injury of any of those for whom
"it is held. That principle pervades the entire law regulat-
"ing the conduct of those who hold fiduciary relations to
"others, and, instead of being relaxed, should be rigidly
"enforced in cases of breach of duty or trust by corporate
"managers seeking to enrich themselves at the expense of
"those who have an interest equally with themselves in the
"property committed by law to their control. It would be
"difficult to overstate the mischievous results of a contrary
"rule, as applied to those intrusted with the management
"of corporate property."

There can be no doubt that this principle applies to the case at bar, and that this preference of the claim of the Fargos—even if we were to concede that they had a *bona fide* claim—was a fraud in which the Bank and the Rubber Companies knowingly united and gave their active assistance. *If the Fargos had taken a judgment note for their claim, they never could have enforced it against the rights of the other creditors, even if the judgments of the Bank and the Rubber Companies were valid.* Their only way of

"getting something to live on" was by having the cash in hand. The money paid in order to thus make effectual from the start the perpetration of this fraud on creditors, cannot be regarded as having the first element of a just claim. On the contrary, the fraud which was its dominating element infects the whole transaction. It is no part of the business of a court of equity to separate the good from the bad in this mixture and consolidation of claims which was brought about as a part of a scheme of fraud.

The case of *Sutton Mfg. Co.* v. *Hutchinson, supra*, is cited in the brief of counsel for the Rubber Companies, where they seek to distinguish between preferences to directors and preferences to outside creditors. They admit the rule as we state it with reference to preferences to directors, and say also that in such cases the state decisions control in the Federal Court. Their reference to this principle and to the state decisions is in connection with their argument that an insolvent corporation has a right to prefer outside creditors, and that therefore the preference to the Rubber Companies is valid. This, of course, entirely ignores the obvious fact that the Rubber Companies controlled the board of directors, a fact which was so potent in its legal consequences in the minds of Mr. Beale and Mr. Porter that they did not dare to let that board pass the resolutions authorizing the judgment notes, because they thought the preferences would then be fraudulent within this rule. (Rec., 446-7.) But it was that board which authorized the transfer of the Dixon property to the Bank, and the judgment notes for $50,000, which included this $10,000 for the Fargos; and as a part of the same transaction, by contract prepared by Mr. Porter—who also prepared the resolutions—the Rubber Companies were given an interest in that property and in that judgment; and the property was,

by the terms of the pro-rating agreement between the Bank and the Rubber Companies, to be "subject to the care, "*custody*, control, management, *manipulation* and sale by "the firm of Isham, Lincoln & Beale, *who will act as trustees* "*in the premises for all parties concerned, and whose actions* "*and judgment in and about the same shall be sole, final* "*and conclusive.*" (Rec., p. 386.)

All of these papers were executed at the same time and as parts of one transaction, and clearly must be construed together. Their practical effect was undeniably to give to the Rubber Companies, through the direct action of their directors, an interest in the preference to the Bank, and to consolidate all of the claims of these three preferred creditors. This included, to the knowledge of the Rubber Companies and with their assent and active assistance, this $10,000 for the Fargos, the fraudulent character of which cannot be cloaked by explanation, and is rendered only more glaring by denial.

CONSIDERATION OF THE RULE LAID DOWN IN THE ATWATER CASE BY THE SUPREME COURT OF ILLINOIS WITH RESPECT TO THE RIGHT OF DIRECTORS OF AN INSOLVENT AND FAILING CORPORATION TO PREFER THEMSELVES.

It being conceded by opposing counsel that this court should follow the Illinois rule with reference to preferences by insolvent corporations. (Petitioner's brief, p. 24), we call attention to the leading Illinois case on that subject, which, with diplomatic tact, counsel failed to cite in their brief in the Court of Appeals and to which they have hardly, in their brief in this court, "paid the respect of a passing glance"—the case of *Atwater* v. *American Bank*, 152 Ill., 603.

In that case a preference by way of judgment note was given to Atwater for a *bona fide* debt due him, but it included also money due to two of the directors, Spaulding and Whittle. The preference was attacked as being fraudulent under this rule, and in defense it was urged that it was partly for a debt to an outside creditor, and therefore not fraudulent, at least as to that part. But the court held that the fraud infected and rendered void, as against creditors, the entire judgment. We quote from the opinion:

"Potter, Spaulding and Whittle were a majority of the "board of directors who authorized the execution of the "note to Atwater. Potter had an interest in consenting to "the making of that note, because he was thereby released "from his liability as guarantor, and Spaulding and Whittle "sought to obtain an unlawful preference by the use of At- "water's name. Atwater, who was himself a stockholder as "well as a creditor, permitted his name to be used by these "directors, *one of whom was his confidential agent and "friend*, as a cover for the purpose of obtaining for them "and for himself a fraudulent preference. A court of equity "can not allow him to reap advantage from such a trans- "action."

The court then takes up the question whether the fraud infected the whole judgment, and said:

"Where such a judgment is entered up as a fraudulent "cover to protect the defendant's property from his other "creditors, *or to put it into the hands of creditors who have "no right to appropriate it to their own debts*, courts will "deal with it as they would deal with any other fraudulent "contrivance. If a creditor permits a judgment—rendered "in his name for a large amount due to parties who have "no right to the entry of such judgment in their favor— "to be used for a fraudulent purpose as against subsequent "creditors, *he will be postponed until after they are paid*, "even though a portion of the debt embraced in the judg- "ment is honestly due to him. (*Citing cases.*) Atwater's

"debt was so blended with that of Spaulding and Whittle, "the directors, and his dealings with the corporation were "so far the dealings of Spaulding, that he must be held to "occupy no better position than they do: his rights and "theirs, we must presume, were voluntarily on his part put "upon the same footing."

No substantial distinction, in any way favorable to the defendants, can be pointed out between that case and this. In fact here the situation is far worse. For in the *Atwater* case the debts to the directors were in fact owing. But here there is no satisfactory evidence of any actual indebtedness from the company to the Fargos; and the circumstances under which the money was paid convince the mind that it was merely a means of keeping them friendly in the impending contest with other creditors, by furnishing them from the goods out of which those creditors had been defrauded, with money to live on.

That this $10,000 transaction places the Bank in an entirely different situation from what it otherwise would have occupied can not be seriously doubted. When Fargo applied to Mr. Keith for the money, telling him that the corporation was about to fail, the Bank could have stood upon and enforced its rights as a creditor, for the $40,000 which was actually owing. Its position as a creditor gave it the right to defeat—as all the courts who have considered this case have held the merchandise creditors have a right to defeat—the preferences of the Rubber Companies. By enforcing those rights it would have been in a position to share *pro rata* with the other *bona fide* creditors of the corporation.

But the Bank was not willing to rest upon the rights which its position as a creditor secured to it, because the enforcement of those rights would necessarily make it share *pro rata* with the other creditors. It desired to gain a preference over

other creditors, and to *prevent* them from enforcing their rights. For this purpose, it abandoned the side of the *bona fide* creditors, joined forces with the Rubber Companies, and agreed to assist them in their effort to defeat the other creditors. It was not content with doing this merely for the purpose of collecting the debt which was then owing, and which had been contracted without any fraud on its part, or connivance at the fraud of the Fargos and the Rubber Companies. It voluntarily added this $10,000 to its debt, and for no other purpose than to get an advantage over the other creditors, which could be secured only by assisting in the full accomplishment of the Rubber Companies' fraudulent scheme, knowing that the Fargo Company got no benefit from the transaction, and that the money was going for the personal benefit of those who were implicated in the fraud to which the Bank thus made itself a party.

Conceding that the Bank would have had the right, at the time of the failure, to take a judgment note or other security for its debt of $40,000, and to enforce the security for its individual benefit, if done without combination with the Rubber Companies, we submit that if it had such right, it was only because it was at that time a *bona fide* creditor, with no responsibility for the frauds which the Fargos and the Rubber Companies had committed. But on no theory can it justly be said that the Bank had the right—with full knowledge of all the facts placed before it—to enter into a new arrangement with the Fargos and the Rubber Companies, an arrangement which secured to it the advantages and benefit of the January machinery and which bound it to actively assist the Rubber Companies in the enforcement of their fraudulent scheme.

The affidavit of Mr. Keith on this subject, in the light of the subsequent evidence drawn from both him and Fargo

on the witness stand, was—to put it very mildly—utterly inexcusable. He not only makes no reference whatever to even the fact as he conceded it—that Fargo asked for this money to pay the individual notes of himself and his brothers—but he states—almost in so many words—*that he paid the money to the company with the understanding on his part that it was perfectly solvent, and had no intention of failing.* (Rec., 112, 113, 659-661.) This affidavit was omitted by the Bank and the Rubber Companies from the transcript on their appeal to the Court of Appeals, and we were compelled to file a supplemental record in order to bring it to the attention of that court.

In this affidavit Mr. Keith said that about the first of August, he notified Fargo that he would be unable to give the company further credit, and that the Bank's entire debt of $40,000 must be paid by the first of November following; that in response to this notice, Mr. Fargo called on him and stated that, owing to the difficulty of making collections, etc., the company would not be able to pay the Bank's debt at the date named, and that it would be obliged to borrow from the Bank $10,000 more; that Fargo at the same time said that the company was amply solvent, and there was no question that its assets would, in any event, be sufficient to pay off all its outstanding debts; that thereupon he agreed to advance the $10,000, if judgment notes were given for the entire $50,000; that Fargo assented to this, and told him that the Rubber Companies had judgment notes, and that he would get the necessary authority from his company to give the judgment notes requested by the Bank; that Fargo later reported to him that he had obtained the authority, and thereupon the Bank loaned Fargo & Co the additional $10,000 and received its two judgment notes for $25,000 each, and upon receipt of them, paid over to C. E. Fargo,

as president, $10,000 and surrendered to him the plain notes evidencing the other $40,000.

He then states that, having learned the extent of the indebtedness to the Rubber Companies, and that they had an agreement by which they were authorized to secure their debts before any of the other creditors, he investigated the agreement between them and Fargo & Co., and thereupon "caused further steps to be taken, looking toward the pay-"ment or security of the two judgment notes aforesaid, and "upon receiving a proposition from C. H. Fargo & Co. to "purchase its manufacturing plant at Dixon for $25,000 "he took said suggestion under consideration with a view "of determining the desirability thereof to said Bank." That he accepted this proposition, received the deeds to the property and cancelled and surrendered one of the $25,000 judgment notes. (Rec., 660, 661.)

The court will notice that in this affidavit Mr. Keith purports to state the order in which the transactions took place; *that he states them as successive and not concurrent transactions, and states absolutely that he paid over the $10,000 and received the two notes of $25,000 each before he entered upon the transaction for the purchase of the real estate at Dixon. Yet the undisputed fact is that the $10,000 was not paid over until the judgment notes were executed, and that the resolutions for the execution of the judgment notes and for the conveyance of the Dixon property in satisfaction of one of those notes were passed at the same meeting, in the afternoon of August 5th.* (Rec., 66-7.) FARGO SAID THAT HE WAS LOOKING OUT FOR THAT $10,000 AND DID NOT DELIVER THE PAPERS TO THE BANK UNTIL HE GOT IT. (Rec., 199-200.)

We contend then:

1. That the advancing of this $10,000 to the Fargos, and

including same in the judgment notes, was an active, actual fraud which infects the Bank's entire claim and renders it fraudulent as to the other creditors.

2. That the Rubber Companies actively participated in consummating the fraud, and have so blended the entire claim with theirs that the fraud taints their claims as well as the Bank's

3. That the Bank forever cancelled one of its $25,000 judgment notes, and satisfied the indebtedness it represented, by receiving in payment thereof the conveyance of the Dixon plant. That this part of the Bank's debt was cancelled and paid is shown by Petitioners admission at page 50 of their brief.

X.

The Decree of the Circuit Court of Appeals Holding that the Rubber Companies and the Bank Should be Postponed until the Claims of all other Creditors Have been Paid in Full, is Correct and Should Be Affirmed.

There are two plain and well established equitable principles upon which we base our contention that the order, or decree of the Court of Appeals should be affirmed and the decree entered by Judge Grosscup in the trial court should be modified so as to provide that the claims of the Respondents and other creditors who have proved up before the Master, should be paid in full before either the Rubber Companies or the Bank are permitted to receive any portion of the proceeds of the Fargo assets now in the hands of the Receiver for distribution.

First. The January scheme, and all things done and agreed to be done thereunder, pursuant to the secret under-

standing, are permeated with actual fraud, which in equity forbids the wrongdoers from sharing in the proceeds of the estate until the other creditors are paid in full.

Second. By this scheme the Rubber Companies clothed the Fargo Company with a false credit, and thereby induced the complainant and intervening petitioners to loan the Company money and sell it goods on credit, which they would not have done had they known the truth. By reason of this conduct the Rubber Companies deceived the other creditors into parting with their money and their property, for which they will never be paid, unless paid out of the fund in litigation. Justice and equity demand that these injured creditors should be repaid before the parties responsible for this condition of things are permitted to share in the fund.

The confession made by Fargo to Johnson, Sadler and Beale at the first Auditorium interview on January 2d, was that if they did not at once bolster up the Fargo Company it must immediately go to the wall. If the January scheme had not been then and there evolved and the Fargo Company had then ceased doing business, it could, and would thereafter have obtained no property or money on credit. The plan then adopted kept the Fargo Company alive with false credit and dug the baited pit into which subsequent creditors fell. Hence it follows that all credit given after January was the direct and necessary result of the Rubber Companies' conduct. The only way, therefore, that the creditors complaining here can receive full justice and protection is for this court to hold, as the Court of Appeals has already held, that their claims shall be paid in full before the Rubber Companies and the Bank are allowed to share in the estate.

Moreover, the moneys now in the hands of the Receiver were made up substantially of the proceeds arising from

merchandise which these "*drawn-in*" creditors were induced to sell. In equity and good conscience these proceeds are the actual property of the complaining creditors, and it cannot be possible that the parties who perpetrated the wrong and caused the loss will be allowed to appropriate to their own use any portion of the fund before the equitable owners are reimbursed.

In a recent case in the Federal Circuit Court for the Northern District of Iowa a large number of the authorities are reviewed, and the equities of persons drawn in to give credit to a failing debtor by a scheme somewhat similar to that shown in this record are discussed. Mr. Justice SHIRAS said:

"The mortgage was not recorded until April 6, 1893. "The reason why it was so withheld from record cou[illegible] have "been no other than the one given by Harris in his state- "ment to the agent of complainants, in which he stated that "it was withheld from the record because it would hurt his "credit if it was filed, and the bank assented to his request "not to record it. Having thus aided Harris in obtaining a "false credit from complainants and others, the bank cannot "now be permitted to assert that it has a debt and lien su- "perior in equity to the claims of those whom it aided in "defrauding. * * *

"The wrong and *fraud* committed against third parties "by withholding knowledge of the existence of the chattel "mortgage and the debt secured thereby is not obviated by "the mere device of securing a new mortgage or bill of sale, "as is well shown in the opinion of the Supreme Court of "Iowa in *Goll & Frank Co.* v. *Miller*, 87 Iowa, "426. The inequity chargeable against the bank "is that it aided the debtor in concealing his "real condition, and in obtaining a false "credit, thereby misleading others, and inducing them to "extend a credit which would not have been given had the "truth not been concealed. *The loss resulting from this*

"*conduct must fall upon one of the parties, and equity re-*
"*quires that it shall be visited upon the one whose miscon-*
"*duct has caused the loss.*"

Bacon v. *Harris,* 62 Fed. Rep., 105.

In that case the mortgaged property had been sold and converted into money by an assignee of the mortgagee, and the court decreed that the complainants were entitled to a decree for so much thereof as was necessary to pay the complainants' claim, interest and costs.

In another similar case the following emphatic language was used:

"Knowing that the mortgagor was dealing with the stock "as his own, and that third parties would be justified in be-"lieving that the stock belonged to Oppenheimer, free from "any lien, the mortgagee stands by and permits him to hold "himself out to the world as the owner of the stock free "from liens, and to buy on credit a very large quantity of "goods, which were added to the stock and thereby made "subject to the lien of the mortgage, as between the mort-"gagor and mortgagee. Having chosen to keep the knowl-"edge of the existence of his mortgages from the public, when "he should, in good conscience, have given publicity thereto, "and having thereby misled the creditors into making large "sales of goods on credit to the mortgagor he should not "now, when it is to his advantage and to their injury, be al-"lowed to assert that he holds a valid prior lien upon the "stock of the common debtor, *the larger part of which con-*"*sists of the very goods sold by the creditors in ignorance*
"*of the existence of the mortgage.*

"Under the facts proven by the evidence, and under the "rule laid down in *Crooks* v. *Stuart,* 2 McCrary, 13; S. C., "7 Fed. Rep., 800; *Argall* v. *Seymour,* 4 McCrary, 55, and "*Robinson* v. *Elliott,* 22 Wall., 513, it must be held that "the mortgages executed and delivered to Ayres are *in fact* "*fraudulent* against Simon, Strauss & Co., and that the

"*latter, as against Ayres, and those claiming under him,*
"*are entitled to the proceeds of the mortgaged property.*"
Simon v. *Oppenheimer*, 20 Fed. Rep., 556.

See, also,

Rumsey v. *Town*, 20 Fed. Rep., 558, and
Argall v. *Seymour*, 4 McCrary, 158.

These cases lay down the same doctrine.

Gill v. *Griffith* was a carefully considered case in the High Court of Chancery of Maryland. The opinion is cited with approval and discussed at some length by the Supreme Court of the United States in the *Blennerhassett* case, 105 U. S., 119.

In the *Gill* case the instrument condemned by the court was a bill of sale in the nature of a mortgage on the debtor's household goods. It was originally executed on March 22, 1845, to secure a new advance of about $6,000. It was executed to help the mortgagor out of financial embarrassments, in the confident belief that he was solvent, and the *bona fide* expectation that the financial relief afforded would be successful in putting the mortgagor on his feet. The mortgage and subsequent renewals of the same instrument were kept off the record until June 4, 1846, when the last renewal was recorded. In the meantime the *mortgagee* made further advances to the amount of $4,000. In the opinion, Mr. Chancellor Johnson elaborately reviewed the facts and authorities on the subject, and said, among other things:

"Independently of authority, nothing strikes the mind
"with more force than that if one of two innocent persons
"must suffer, the loss should fall upon that one whose act
"has occasioned the calamity. Now, can there be a reason-
"able doubt that the act of the defendant, Griffith, in grati-
"fying the defendant, Schley, in what is called a natural
"desire of avoiding the mortification of having the condition

"of his affairs exposed to the knowledge of the citizens of "Baltimore, has caused a heavy loss to the complainants, "Mrs. Duncan and Mrs. Handy? Upwards of twelve thou- "sand dollars of this trust money was received by him in "the months of October and November, 1845, WHEN THE "PROBABILITIES ARE VERY STRONG, if the desperate con- "dition of his affairs as disclosed by these mortgages, had "been known, steps would have been taken in time to pre- "vent the receipt of the money by him. The object of Grif- "fith, as he says, was to gratify Schley in this very natural "desire, but surely he had no right to indulge himself in "this way at the expense of third persons. If he must in- "dulge Mr. Schley in such desires, it would seem to be no "more than even-handed justice that he should do so at his "own risk. * * *

"Nothing seems to me more plainly sanctioned by the "principles of equity than that a man should not only be re- "sponsible for the direct effects of his acts, but likewise for "all the consequences which may naturally and reasonably "be expected to flow from them. * * *

"Entertaining these views, a decree will be signed vacat- "ing the mortgage of the personal estate of the 4th of June, "1846, and appointing a trustee for the sale of the property "contained in it for the payment of the claims of the com- "plainants."

Gill v. *Griffith*, 2 Md. Ch., 281.

The Supreme Court of Iowa, in 1893, discussed a concealed mortgage transaction, where likewise the mortgagee's claims had been increased from $7,500 to $12,222, by new loans made during the period in which the mortgages were kept off the record. The court say:

"There can be no doubt that the withholding of the mort- "gages from record, in pursuance of an agreement between "the parties, could have but one object, and that was to main- "tain the credit of Miller and lead parties with whom he "dealt to give credit to him, in the belief that he was not a "chattel mortgaged merchant. In such a case it is well

"settled that the mortgagee cannot be permitted to insist on "the validity of his mortgage, as against those who have "given credit to the mortgagor under such circumstances. "*Such a transaction is fraudulent as to the other creditors.*

* * * * * *

"But the bill of sale could not purge the several mort- "gages of their *fraudulent* character. The mischief was "done by withholding the mortgages from record. *It is "fair to presume that if the mortgages had been placed on "record, the plaintiffs would not have been creditors of Mil- "ler.*"

Goll & Frank Co. v. *Miller,* 87 Iowa, 426.

And accordingly, the court affirmed a decree which had awarded the complaining creditors priority in the distribution of the proceeds of the mortgaged property. The language of the *Goll & Frank Co.* case is quoted with approval, and the doctrine there laid down as to the fraudulent character of such mortgages is expressly affirmed and relied on in *Falker* v. *Linehan,* 88 Iowa, 641, and *Liddle* v. *Allen,* 90 Iowa, 741.

The decree of distribution ordered by the Supreme Court of Michigan in a recent case is important to be considered here. The facts were that one Rumsey had obtained a chattel mortgage for $1,900 in April, which he did not record until July. Between the date and the recording of Rumsey's mortgage complainants and others gave credit to Harl & Stevens, the mortgagors, by sales, loans and extensions. A former decree had been made, declaring the Rumsey mortgage fraudulent and void as to creditors whose debts were contracted during the interval between the date and recording of the mortgage. The matter coming up on the question of distribution, the Supreme Court said:

"We think, therefore, that the decree of distribution "should be framed on these principles: It should, after

"making allowance for expenses and charges out of the gen-
"eral fund, and not out of the preferred fund, direct the
"amount of $1,900 and interest from the date of the Rum-
"sey mortgage, to be paid as follows: Five hundred dollars
"to Rumsey for exemptions; the remainder to be divided
"ratably between complainants and the other creditors whose
"claims were made, or affected, as before mentioned, during
"that interval, so far as it will go.

* * * * * *

"Lastly, for the balance due Rumsey on his mortgage,
"and for any balance due the complainants and the other
"partly-paid creditors, as aforesaid, they will participate
"ratably in the distribution of the residue."

Root v. *Harl*, 62 Mich., 423.

We will not further multiply quotations from the authorities. In the decisions cited and discussed in other divisions of this brief the same principles are announced by a large number of courts of last resort.

XI.

The Authorities Cited by Petitioners in Their Brief and Argument, when Read in Full and Carefully Analyzed, are not only Not Hostile to, but Directly Maintain the Contention of Respondents.

We will now discuss some of the authorities cited by Petitioners' counsel, and especially the Illinois authorities, upon which they seem to rely.

Respondents are perfectly willing to rest their case upon the Illinois authorities, because their examination will disclose to the court that there is no state in the Union in which secret liens, by way of chattel mortgage, or otherwise, are so severely condemned as in Illinois.

THE HEGELER CASE.

The case of *Hegeler* v. *First National Bank of Peru*, 129 Ill., 162, cited by opposing counsel, is disposed of by the opinion itself, where it is said:

"*There is no pretense that there was any agreement*" (by the Bank) "to conceal its claim against the Glass Com-"pany, much less that any such agreement was made for the "purpose of enabling the Company to obtain credit from "others."

The court also say (p. 162):

"It must be admitted *that if the averment that appellee* "'*agreed to conceal the same,*' (*i. e.*, the judgment notes), "'*and to allow said Glass Company to retain the full control* "'*of the property free from any record or known lien, and* "'*that in pursuance of such agreement it did conceal,*' "etc., was stricken out of the bill, it would be demurrable "for want of equity appearing on its face. *There is not a* "*particle of evidence in the record to support that aver-*"*ment.*"

Thus it will be seen that the *Hegeler* case holds that if there be a secret agreement, express or implied, by which the lien, or control *was to be kept secret*, that then such secret agreement vitiates the transaction and makes it *actually fraudulent*.

THE FIELD-RIDGELY CASE.

The case of *Field* v. *Ridgely*, 116 Ill., 424, was decided upon demurrer. A bill was filed in that case by a creditor to set aside certain preferences on the ground that they were fraudulent. The case was decided upon the allegations of the bill. The case shows that *the bill did not contain a solitary averment establish-*

ing, or tending to establish that any agreement had ever been made between the debtor and creditor, by which the judgment notes and mortgages, under which the preferences were secured, should be kept off the record, in order to give the debtor a fictitious credit, or any credit whatever.

On this subject the Supreme Court say in the *Ridgely* case, at page 430:

"The theory of appellants' case * * * is not as "clearly defined as could be wished. This doubtless result- "ed from the scarcity, or indifferent character of the ma- "terial at the hands of counsel in propounding the theory."

Then, after discussing some vague theory set out in the bill that appellees were *ex maleficio* trustees, with respect to which the court say, "it is clear the charges in the bill "are not sufficient to sustain it on this theory," the court continues:

"But outside of this, the acts of fraud relied on to raise "the constructive trust, are wholly insufficient. Indeed, of "themselves, they are no evidence of fraud at all. What "are they? 1st. That appellees failed to put their mort- "gages on record when executed. 2d. That they retained "in their possession the judgment notes an unreasonable "length of time without notifying appellants or others of "their existence. *These are the only tangible facts alleged "in the bill upon which the charge of fraud is based.* We "are aware of no principle outside of self-interest and pru- "dence in business, that requires the holder of a mortgage "to put it on record at any particular time. By not doing "so promptly, he runs the risk of having it postponed to "junior liens, and even of losing the benefit of it alto- "gether."

The court will observe that the risk thus pointed out in the *Ridgely* case, never existed in the case at bar. By the January scheme, the Rubber Companies ingeniously escaped this risk by controlling the Board of Directors, and thereby

paralyzing the volition of the debtor company. We have already shown that the taking of a chattel mortgage was earnestly discussed at the Auditorium meeting on January 2, and was rejected by the Rubber Companies' counsel, because Mr. Beale well knew that a chattel mortgage kept off the records under the circumstances disclosed in this case, would have been worthless. This is the language of Mr. Beale on that subject (Rec., 567):

"*I did not take for the Rubber Companies a chattel mortgage on the stock of goods of the Fargo Company for two reasons: 1st. It was a shifting, changing stock. 2d. It involved putting the chattel mortgage on record, which would have ruined the credit of the Fargo Company.*"

The question of a secret understanding, or agreement by which the judgment notes and mortgage (on real estate and not on a shifting stock of merchandise), were to be kept secret and off the records, *did not arise in the Ridgely case.* The bill itself did not claim, or aver that any such agreement, or any facts or circumstances from which such secret agreement might be reasonably inferred, ever at any time existed.

While in the case at bar, the parties were searching the books and exhausting their ingenuity in devising some plan by which the secrecy of the transaction might be maintained, and at the same time, the advantages of a publicly recorded document, preserved.

THE HAAS-STERNBACH CASE.

Counsel for petitioners, for some unaccountable reason, seem to pin their faith to the case of *Haas* v. *Sternbach*, 156 Ill., 44. This was, technically considered, a *mortgage case.* The mortgage under investigation in that case

was not given by the debtor firm itself, but on the contrary was a *real estate mortgage* of his own individual property given by one of the partners. The Illinois court directs attention to this fact as having weight in determining the intention of the parties.

The court say at page 56:

"*There was no agreement or promise to keep the mort-*
"*gage secret,* but simply that it should not then be record-
"ed," and (on pages 55 and 56), "While the unsworn
"answer of Henry Leopold sets up conversations between
"himself and Charles Sternbach relative to keeping the
"mortgage off record and concealing it from others, which,
"if true, *would establish a wicked conspiracy to defraud*
"*creditors by giving a false credit to himself and his firm,*
"his own testimony does not support those allegations. We
"have gone over his entire testimony as well as that of
"Charles Sternbach and Oscar M. Stern, who testified to
"a conversation with Leopold, on the subject of making the
"mortgage, about the time it was executed, and we are un-
"able to find sufficient evidence to establish a fraudulent
"design or purpose on the part of the complainants or
"Charles Sternbach, in withholding the mortgage from
"record. The testimony of Sternbach corroborated
"by that of Stern, is to the effect that it was so
"withheld at the request of Leopold, as a favor to him, *with*
"*the understanding that the mortgaged property would*
"*shortly be sold, and the indebtedness liquidated.*"

It is clear from the opinion of the court as a whole, that the decision was based on the conclusion that the record did not establish *an understanding or agreement to keep the mortgage secret in order to sustain the credit of the mortgagor and his firm,* and that if the record had shown an agreement, or understanding for that specific purpose the court would, using its own language, have condemned it as "A WICKED CONSPIRACY TO DEFRAUD CREDITORS."

If an agreement to keep the *Haas-Sternbach* mortgage secret would have been "*a wicked conspiracy to defraud creditors,*" how shall we fitly characterize the January scheme. There is no word or phrase in the English language, rugged as it is, to do the subject justice.

The *Haas-Sternbach* case was under consideration in the Appellate Court for the First District of Illinois in *McNeill* v. *Plows*, 83 Ill. App. Ct., 186, and the decision of that court ends all controversy on this question, if any real controversy as to the meaning of the Supreme Court of Illinois, in the *Haas-Sternbach* case were possible. We respectfully urge the court to read the *McNeill* opinion. The *Haas* case went to the Supreme Court of Illinois by way of the Appellate Court, and therefore, the latter tribunal was able, from an examination of its own files and records, to determine what the allegations of "an "unsworn answer of Henry Leopold" were as to the "conversations between himself and Sternbach relative to keeping the mortgage off the record and concealing it from "others."

In discussing the *Haas* case, the Appellate Court said:

"The case was affirmed by the Supreme Court (*Haas* v. "*Sternbach*, 156 Ill., 44-55), in which it is said, 'while the "unsworn answer of Henry Leopold sets up conversations "between himself and Charles Sternbach relative to keeping the mortgage off record and concealing it from others, "which, if true, would establish a wicked conspiracy to "defraud creditors by giving a false credit to himself and "his firm, his own testimony does not support these allegations.' *From an examination of the abstract and of the "answer referred to in that case in this court,* we find statements which make the case in point of fact quite similar "to the case at bar, and we regard *the language of the Supreme Court, when considered with reference to the state-*

" ments of the answer, as deciding that where a party takes " a mortgage and keeps it off record in order to support the " credit of the maker, upon the condition or agreement that " the maker shall keep him informed of his affairs so that " if any trouble is likely to arise with the maker's creditors, " the grantee can place his mortgage upon record, such a " transaction is a fraud in fact. See also *Weber* v. *Mick*, " 131 Ill., 520-6."

The question involved in the *McNeill* case was, whether or not the concealment of a bill of sale constituted an *actual fraud* as distinguished from a *constructive fraud*. The case was a statutory attachment proceeding. The attachment was sued out on the ground that the defendants had committed *an actual fraud* in concealing the bill of sale. In Illinois it is the settled law that actual fraud must be shown in order to maintain a statutory attachment sued out on the *ground of fraud*. The trial court held that the transactions in question constituted merely a *constructive fraud*, and accordingly instructed the jury to find the issues for the defendant in the attachment suit. The Appellate Court, however, held that the evidence, if true, constituted *actual fraud*, and therefore, the question should have been submitted to the jury as to the truth of the facts themselves.

In connection with the *McNeill* case, we direct the attention of the court to the telegram sent by Beale to Sadler on July 16 (Rec., 593-4), in which he said:

" Fargo promises to keep me informed so that if necessary, " judgments can be entered on our judgment notes."

This telegram presents a condition of things identical with what existed in the *McNeill* case.

In view of the conclusive character of the evidence in this record, showing that the parties not only expressly arranged and intended that the January scheme should be

kept secret for the very purpose of sustaining the credit of the Fargo Company, but that in fact this intention and understanding was carried out and fortified by elaborate precautions, it must be clear that the *Haas* case is a strong authority in support of our contention.

The Supreme Court of Illinois never had before it, so far as we have been able to ascertain, a case like the one at bar; but the spirit of its decisions must satisfy this court that should such a case ever be there reviewed, it would receive the severest condemnation. In all the *Illinois unrecorded mortgage* cases cited by opposing counsel, the Supreme Court lays great stress upon the fact that *an agreement, or understanding that the mortgage should be concealed,* in order to give the failing debtor a false credit, was either not alleged or not supported by the evidence; and that if any such agreement, or understanding had been disclosed in these cases, the court would have condemned it as constituting an actual fraud, or to use Judge Mulkey's emphatic words, in the *Field-Ridgely* case, *supra,* "A WICKED CONSPIRACY TO DEFRAUD CREDITORS."

THE CASE OF ATWATER V. AMERICAN BANK, 152 ILL., 605.

In their brief counsel say they do not overlook the *Atwater* case, and suggest "it seems to have been regarded "as a case of actual fraud." The *Atwater* case is directly in point as to the fraudulent conduct of the Rubber Companies and the Metropolitan Bank when the final collapse of the Fargo Company took place in August, 1896. Counsel's suggestion that "it seems" that the *Atwater* case was regarded as one involving actual fraud, is amusing, in the light of the vigorous language used by the Supreme Court of Illinois on that subject. That case is analyzed and ap-

plied to the facts in this case at pages 106-108 of this argument, where we discuss the conduct of the Rubber Companies and the Bank, to which we respectfully refer the court.

THE SANFORD TOOL COMPANY CASE AND THE ILLINOIS STEEL COMPANY CASE.

Counsel cite these two cases in support of the proposition that preferences given to directors will be sustained, if the record shows that they were given in good faith, while the corporation was a going concern, as security for present advances, *bona fide* made, in the belief that they would help the corporation out of its embarrassments.

An examination of *Sanford Tool Co.* 1. Howe, 157 U. S., 312, and *Illinois Steel Co.* v. *O'Donnell*, 156 Ill., 624, will show that in their essential features they are strikingly different from the facts presented by this record.

1. There was no element of secrecy, either by agreement or otherwise calculated to create a fictitious credit.

2. There was no merely colorable election of dummy directors for the sole purpose of secretly and adversely controlling the actions of the corporation in the interest of a favored creditor, and forever excluding all other creditors.

3. On the contrary, the directors in the *O'Donnell* and *Sanford Tool* cases were all *bona fide* directors, openly and publicly acting as such and using their best experience and ability in good faith to advance the interests of the corporations in their keeping.

4. As a natural conclusion from these facts there was no question in either of these cases as to the effect of an arrangement like the January scheme in creating a secret lien, or fictitious credit, nor were the rights of persons drawn in to give credit by such a secret and fraudulent arrangement presented to, or discussed by either court.

5. In the *Sanford Tool* case it was admitted on the record by the pleadings that the CONDUCT OF ALL PARTIES WAS CHARACTERIZED BY GOOD FAITH. (p. 319.)

6. The insolvency of the concerns was by no means hopeless or even serious. In the *Sanford Tool* case the property and assets were amply sufficient to pay all the indebtedness, if the property was worth *what it had recently cost in cash.* In the *O'Donnell* case it was said that the concern was meeting its commercial obligations as they matured. The security given in these cases was a reasonable and usual security. In the *Sanford Tool* case the security was a second mortgage on real estate already encumbered for a large sum; *all the other property of the corporation was left free for the other creditors.* In the *O'Donnell* case the *only security taken was a judgment note for an actual advance made at the time*, and not for any pre-existing debt.

The Supreme Court of Illinois say in the *O'Donnell* case, that the company,

"Got the benefit of the moneys so borrowed and they were "used in completing the new plant that it constructed at "a cost of some $280,000, and in conducting and keeping on "its feet its large manufacturing business. The banking "firm did not obtain or anticipate receiving any advantage "to itself by loaning the money to the corporation, other "than that of getting interest on the money that it loaned. "The corporation at the time of these transactions was em"barrassed for want of means—in fact, insolvent in the "sense that its liabilities exceeded its assets—and it was "forced to adopt various temporary shifts and expedients "for the purpose of raising money. At the same time it "was a going concern; had an extensive plant which had "cost it over a quarter of a million dollars, and was unincum"bered; was employing some 300 workingmen; had on hand "manufactured products worth about $200,000, and was "doing a large business and meeting its commercial obli-

"gations. * * * There is a marked difference between "a case where a *mortgage or other preference is given by "an insolvent corporation to a director or officer to secure "a pre-existing indebtedness*, and a case like this where the "corporation though in fact insolvent in the sense above "stated is a going corporation that is seeking to accom- "plish the objects of its incorporation, and the security is "given to the directors for moneys actually and in good "faith loaned at the time the security is given to such em- "barrassed corporation and for its benefit."

In this same opinion the language of Mr. Justice HARLAN, in *Sutton Manf. Co.* v. *Hutchinson*, 11 C. C. A., 320, on that subject is cited with strong approval, and especially that portion which reads:

"Of course, in cases of that kind (security given to di- "rectors) a court of equity will closely scrutinize the trans- "actions, and in a contest between general creditors and the "director, or managing officer who takes a mortgage upon its "property, will hold the latter to clear proof that the mort- "gage was executed in good faith and was not a device to "enable him to obtain an advantage for himself over those "interested in the distribution of the mortgagor's property."

Further on, at page 636, in the *O'Donnell* case, it is said:

"THE LINE OF DEMARCATION THAT SEPARATES VALID FROM "INVALID PREFERENCES TO DIRECTORS OR OFFICERS OF IN- "SOLVENT CORPORATIONS, LIES BETWEEN ALREADY INCURRED "LIABILITIES AND LIABILITIES ASSUMED BY GOING CORPO- "RATIONS AT THE TIME THE SECURITY IS GIVEN AND TAKEN."

Opposing counsel's suggestion that the $50,000 credit advanced to the Fargo Company in January, brings this record within the rule laid down in the *O'Donnell* case, will not bear the light of legitimate inquiry and criticism.

The Rubber Companies never intended to advance a dollar, either in money or credit, until they were forced to do

so, by the threat of the Fargos to "treat all creditors alike." On the contrary, Johnson pleaded with Fargo, that it was his duty then and there, on January 2d, to protect and prefer the Rubber Companies for the full amount of their past due claims then aggregating $284,000, including the value of the consigned goods. This Fargo refused to do. As the only alternative left the Rubber Companies purchased the preferences they secured by the January scheme, by then and there agreeing to advance to the Fargo Company $50,000 in credit.

But the court must remember that this advance was made upon the express agreement that the $44,900 notes due the Candee Company must absolutely and unconditionally be paid as they matured within four months, and were in fact so paid by about May 1st; and that the whole of the remaining Rubber Company claims must be absolutely secured beyond the possibility of further risk or hazard; and the parties thought they had done this; hence it follows that the preferences given in the case at bar were given to the directors, or to the parties whom the directors expressly represented, for a pre-existing debt, expressly condemned in the *O'Donnell* case.

In the light of these facts (given in detail in our statement), it is absurd for Petitioners to contend that the $50,000 of credits so advanced has anything in common with the moneys advanced by the banking institution to the Illinois Steel Company as recited in that case.

The foregoing considerations demonstrate that this line of authorities does not apply to the facts in this record. The Rubber Companies themselves insist that the only functions which their dummy directors were to perform were such as involved hostility to the corporation. Though wearing the

badge of the Fargo Company, and nominally enlisted in its service, they were in fact actually serving in the ranks of its enemies. They were never *bona fide* directors seeking the company's welfare, but *mala fide* directors, placed in secret control of the corporation to effectuate the selfish ends of their employers.

The organic law under which the Fargo Company was created, provides that "the corporate powers "shall be exercised by a board of directors or man-"agers." (R. S. Ill., Ch. 32, Sec. 6.) It is elementary that directors can act only by a vote of a majority of the board. It is insisted by the Rubber Companies that it was expressly agreed and an essential part of the arrangement under discussion, that the *mala fide* directors were to perform absolutely no functions to further or effectuate the corporate business, and that this express agreement was carried out. Now these dummy directors constituted five out of seven—a majority of the board—and an agreement that the majority of the board shall perform no functions is tantamount to an agreement that the directors shall, in fact, cease to act. Under a charter which provides that the corporate powers can only be exercised by a board of directors, such an agreement is equivalent to an agreement that the corporate powers shall not be exercised. But this pretense that the dummy directors were to exercise no active functions is on a par with the other pretenses of the Rubber Companies in this case. The draft of the proposed agreement itself, prepared as a basis for the January scheme, but afterwards abandoned in favor of an "open arrangement," provides:

"The directors and officers elected at the instance of said "Beale * * * *are expected to act as may be necessary "to guard and protect the interests of said Johnson and of*

"*said two creditor corporations under this agreement.*" (Rec., 588.)

Elsewhere in this brief will be found a discussion of the true character of these directors. (p. 75.) It is sufficient at this point to call attention to the fact that when the crisis came, and affirmative action on the part of the directors was needed, these young clerks were called in by Porter, and by his direction voted the Bank's judgment notes and the conveyance of the Dixon property to the Bank, which in itself constituted a direct affirmative preference to the Rubber Companies by the Fargo Company while it was in the throes of dissolution. For at the time this vote was taken, the Rubber Companies and the Bank had entered into a written agreement, whereby the Petitioners were to share *pro rata* in the proceeds of the Dixon real estate and the Bank's judgment. This fact itself is a sufficient answer —if any were needed—to the claim that the preferences in question were given in January.

The language of Mr. Justice FIELD in *Wardell* v. *Ry. Co.*, is pertinent here. Speaking of the directors under discussion in that case he said:

"They were clothed with power to manage the affairs of "the company for the benefit of its stockholders and creditors. Their character as agents forbade the exercise of "their powers for their own personal ends against the interest of the company. * * * Their position was one of "great trust, and to engage in any matter for their personal "advantage inconsistent with it was to violate their duty "and commit a fraud upon the company."

Wardell v. *Ry. Co.*, 103 U. S., 657.

So Mr. Justice DAVIS said:

"Bound to execute the responsible duties intrusted to their "management with absolute fidelity to both creditors and

" stockholders, they nevertheless acted with reckless disre-
" gard of the rights of creditors as meritorious as those whose
" paper they had endorsed."

Drury v. *Cross*, 7 Wall., 302.

In this discussion of the *Illinois Steel Company* case it is of more than passing interest to remind the court that this case was carefully analyzed, discussed and considered by both Beale and Porter when they were putting the January scheme into shape and force. They admit that had it not been for this case the dummy board of directors, instead of the old board, would have voted the judgment notes and powers of attorney. They thought, however, by directing the old board to vote these secret liens they would escape the rule laid down in that case. Upon that subject Mr. Porter, one of the Rubber Companies' counsel, says (Rec., 446):

" *The reason which actuated Mr. Beale and me to have the*
" *judgment notes made by the old board instead of the new,*
" *and have them delivered prior to the change in the board*
" *of directors was, that we considered it better to do so, be-*
" *cause of the application of the rule that a director of an*
" *insolvent corporation is not allowed to secure any benefit*
" *to someone whom he represents.* We looked up several
" cases, among them that of *Blair* v. *Illinois Steel Company.*"

By inadvertence Mr. Porter names the case of *Blair* v. *Illinois Steel Co.*, reported in 159 Ill., 350, instead of *O'Donnell* v. *Illinois Steel Co.* Both cases grew out of the same litigation and involved substantially the same questions so far as they are materia' here.

On the same subject Mr. Beale says (Rec., 447):

" *I concluded it would be safer for the old board to act*
" *to avoid any question which might be made in the future.*"

Is it possible, in the light of these confessions made by both counsel who had active and controlling charge of the

January scheme, to believe, that they and their principals were not then firmly of the faith that the Fargo Company was hopelessly insolvent and were then preparing for and fortifying themselves against the attack of subsequent creditors? If not, why did they give the subject of *insolvent corporations* and preferences to "*some one whom the director represents*" such careful and profound study?

Conclusion.

It will be no comfort to the Respondents for the court to say, that their wrongs would be redressed if Petitioners had, at the time they committed the frauds in question, a present, conscious intent to injure Respondents. These injured creditors reply, conscious, or unconscious intent, to them the loss and injury is the same. They will never understand such a metaphysical distinction.

If, when the January scheme was launched, the moral perceptions of the men engaged in that enterprise were so perverted that they "imagined an act to be fair and honest "which the law justly pronounces fraudulent and corrupt," shall such a perverted moral sense excuse Petitioners from their responsibility for the damage they have done? There can be no code of morals, or of law, in a community governed by law, which does not hold men to a full accountability for the ordinary and natural consequences flowing from their acts and conduct—especially when it is shown, as in this record, that such acts and conduct are the result of deliberate premeditation.

The representatives of the Rubber Companies were exceptionally able business men of large experience in such matters. They had the advice of able and astute counsel, who

by their own admissions in this record, considered the legal consequences of every step contemplated and of every step actually taken.

The January scheme was deliberately planned and as deliberately put into execution, and every natural consequence flowing therefrom must have been present to the minds of the Petitioners and their counsel. Therefore, we respectfully insist that they can not now claim immunity as the result of haste, oversight or mistake.

Nothing short of holding, as did the Circuit Court of Appeals, that the Petitioners ought not to share in the Fund now in the hands of the Receiver for distribution, will do justice to these injured creditors and protect the commercial world from similar fraudulent schemes.

We earnestly believe that we have established beyond serious controversy that the Rubber Companies in January and August and the Bank in August, were guilty of actual fraud, and therefore must be excluded from participating in the Fund until Respondents and the other innocent creditors have been paid in full.

Respectfully submitted.

JACOB NEWMAN,
GEORGE W. NORTHRUP,
S. O. LEVINSON and
BENJ. V. BECKER,
For Respondents.

No. 150.

Specification of errors by Resps.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1900.

No. 150.

UNITED STATES RUBBER COMPANY, et al.
PETITIONERS.
vs.
AMERICAN OAK LEATHER COMPANY et al.,
RESPONDENTS.
} Certiorari to Circuit Court of Appeals for Seventh Circuit

Specification of Errors by Respondents.

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RESPONDENTS.
Certiorari to Circuit Court of Appeals for Seventh Circuit

Brief and Argument for The American Oak Leather Company et al., Respondents.

Specification of Errors by Respondents.

SPECIFICATION OF ERRORS RELIED UPON.

The parts of the decree of which the appellants (Respondents here) complain may, for the purpose of brief statement, be grouped under four general heads.

First. That it was error not to hold that the conduct of the United States Rubber Company, L. Candee & Co., and the Metropolitan National Bank, was such as to bar them from participating in the distribution of the fund, as against the appellants, who had been induced to deal with Fargo & Co., and become its creditors, after January 6, 1896.

Second. That it was error to hold that the procuring of the $10,000 by Fargo from the Bank for the personal

use of himself and his brothers, and the advancing of the money by the Bank, with knowledge of the purpose for which it was to be used, and including this amount (of $10,000) in the Bank's claims and judgment, was not such a fraud on the other creditors as prevented the Bank from sharing *pro rata* with them, or at least from including the $10,000 as a part of its claim.

Third. That it was error not to hold that all the judgments obtained by both the Rubber Companies and the Bank, and also the assignment of the accounts, were permeated and vitiated by actual fraud, by reason of the fact that the Rubber Companies, with full knowledge of the facts as to the $10,000 advanced to the Fargos, knowingly permitted this $10,000 to be included in the Bank's claim, and assisted the Bank in obtaining the conveyance of the Dixon real estate and its judgment for $25,000, while, at the same time, the Rubber Companies and the Bank had entered into an agreement, by the terms of which the Rubber Companies and the Bank had agreed to share *pro rata* in the proceeds, not only of the Rubber Companies' judgments and the assignment of accounts, but also in the proceeds of the Dixon real estate and the Bank's judgment.

Fourth. That it was error to hold that notwithstanding the satisfaction by the Metropolitan National Bank of $25,000 of its debt against Fargo & Co., it was still a creditor to the full amount of $50,000, and entitled to share in the distribution on that basis.

The first three of these errors involve a consideration of the Master's findings of fact and the exceptions to his report; the fourth is based upon the decree alone, the Master having made no finding with reference to it, except a statement of the uncontradicted fact that the Bank had satisfied $25,-

000 of its debt. (Rec., 170.) We will therefore state in this order the decision of the Master upon the questions of fact to which we filed exceptions, and on which the court based its conclusion that the defendants were entitled to share *pro rata* with the *bona fide* creditors.

I.

The Master's Decision as to the Purpose and Intent with which the Defendants Entered into and Carried Out their Transactions with Fargo & Co. and the Exceptions to his Decision.

The Master found as follows: That the change in the directors, officers and by-laws of the company, and the resolutions authorizing the judgment notes and assignments of account, were for the purpose of giving preferential security to the Rubber Companies, and that the matter was kept secret in order to allow Fargo & Company an opportunity of getting through embarrassments apparently temporary, but not with any fraudulent intent as to the other creditors of the company, and that the arrangement as made was carried out in good faith. (Rec., 162.)

That the advance of the $50,000 on Jan. 6, 1896, and the giving of the securities, were in the belief on the part of Johnson and Sadler, that through this assistance Fargo & Co. would be enabled to continue its business successfully; that the arrangement was entered into in good faith and without any fraudulent intent; and that the parties were not influenced by belief in the insolvency of Fargo & Co. (Rec., 164.) That there was no fraud in fact or want of good faith shown in the conduct of any of the defendants, in respect to the transactions complained of. (Rec., 171.)

He further found that while Fargo & Co. was in fact insolvent on January 6, 1896, the Rubber Companies were ignorant of it, and relied on the representations of Fargo that its assets exceeded its liabilities. (Rec., 163.)

These references to the Master's report show his general findings as to the intent and purpose of the defendants in these transactions. He also made a number of findings as to different facts connected with the matter. These facts and the points in which his findings are claimed by the appealing creditors (Respondents here) to be erroneous are shown by the following exceptions to his report, which are also made a part of the assignments of error. All of these exceptions were overruled by the Circuit Court. (Rec., p. 638.)

Third. "Because the Master should have found that at "the time that Fargo applied to Johnson on January 2, "1896, for assistance on behalf of the Fargo Company, he "informed Johnson that the corporation could not pay its "debts as they matured in the regular course of business, and "that unless it received the assistance which he requested it "would be obliged to fail in business at that time because "of its inability to pay its debts; that upon receiving this "information, Mr. Johnson endeavored to induce Fargo to "give to the Rubber Companies security for all their claims, "which Fargo refused to do, stating that if the assistance "was not given as he requested, so that his company was "compelled to fail, then he would give no preferences to the "Rubber Companies, but would treat all creditors alike." (Exception, Record, p. 627; Assignment of Error, Rec., p. 683.)

Fourth. "Because the Master, in purporting to state "the arrangement made between the Fargos and the Rubber Companies, with reference to the action of the new "directors who were nominated by the counsel for the Rubber Companies, omits to state that it was specifically agreed "and was an essential part of the plan, that these new directors were expected to act as might be necessary to guard

"and protect the interests of Johnson and of the two Rub-
"ber Companies under the agreement made between them,
"and in pursuance of the plan for securing the claims of
"the Rubber Companies and for preventing other creditors
"from obtaining any security which might in any wise in-
"jure or affect the security proposed to be given to the Rub-
"ber Companies." (Exception, Record, p. 627; Assign-
ment of Error, Rec., p. 683.)

Fifth. "Because said Master has found that the change
"of the board of directors and the officers and the changes
"of the by-laws of the Fargo Company and the resolution
"authorizing the judgment notes and assignment of accounts
"were all for the purpose of giving preferential security to
"the Rubber Companies, and that the matter was kept se-
"cret in order to allow the Fargo Company an opportunity
"of getting through embarrassments apparently temporary,
"but not with a fraudulent intent as to the other creditors
"of the company, and that the only purpose of changing
"the board of directors and amending the by-laws was to
"protect the Rubber Companies against the giving by the
"Fargo Company of preferential securities or judgment
"notes to other creditors which should be superior to the
"security of the Rubber Companies, whereas the Master
"should have found that the change in the personnel of the
"board of directors and in the by-laws of the company was
"made for the purpose of withdrawing from the officers of
"the company all power of giving to any other creditor
"security for his debt and for the purpose of preventing
"other creditors from collecting their claims until the
"claims of the Rubber Companies were paid in full, and
"that an essential part of the plan on the part of both parties
"was that it should be kept secret, because they all knew that
"Fargo & Co. could not thereafter obtain goods on credit
"from any one who had knowledge or suspicion of the ar-
"rangement, and that this secrecy was maintained for the
"purpose of enabling Fargo & Co. to obtain goods on credit
"from persons with whom they were then about to deal."
(Exception, Record, p. 627. Assignment of Error, Rec., p.
684.)

Sixth. "Because the Master has found that the arrangement as made between the Rubber Companies and the Fargo Company was carried out in good faith by the parties, whereas he should have found that the arrangement was not in good faith but was in furtherance of a plan to hinder, delay and defraud other creditors." (Exception, Record, p. 628; Assignment of Error, Rec., p. 684.)

Seventh. "Because the Master finds that the Rubber Companies were in ignorance of the fact that on January 6, 1896, the assets of the company were insufficient to discharge its indebtedness, whereas he should have found both from the testimony of Johnson, Sadler, Beale and the other witnesses in the case, that that was the first fact which was called to the attention of the Rubber Companies and was placed before them as the reason why it was necessary that something should be done in order to prevent the Fargo Company from failing at that particular time." (Exception, Record, p. 628; Assignment of Error, Rec., p. 684.)

Eighth. "Because the Master finds that the indebtedness incurred by Fargo & Co. for goods purchased after January 6, 1896, which remained unpaid on August 6, 1896, was only $142,690.95, whereas he should have found that the amount of said liabilities remaining unpaid on August 6, 1896, was upwards of $193,000." (Exception, Rec., 628, 611; Assignments of Error, Rec., 685, 669.)

Ninth. "Because the Master finds that between January 6, 1896, and August 6, 1896, the Fargo Company reduced its general indebtedness to a considerable extent, whereas there is no evidence before him justifying that finding." (Exception, Rec., 628, 611; Assignments of Error, Rec., 685, 670.)

Tenth. "Because the Master's finding that the advance of $50,000 on January 6, 1896, and the giving of the judgment notes and security referred to was the result of an evident feeling upon the part of all parties to the transaction, and was in the belief and expectation on their part that through the assistance which was in this way afforded the Fargo Company, it would be enabled to continue its

"business successfully and become ultimately relieved of "its financial embarrassments, and that such arrangement "was entered into in good faith and without any fraudulent "intent, is not sustained by the evidence, the evidence show- "ing, on the contrary, that the whole arrangement of Janu- "ary 6, 1896, was entered into for the purpose of afford- "ing such security to the Rubber Companies which in- "volved the hindering and delaying of the other creditors "of the company and rendering it impossible for the other "creditors of the company to obtain any security whatever "for the indebtedness due them, in case they applied for the "same, or sought such security, and for the purpose of in- "ducing persons to sell goods upon credit to the company, in "ignorance of the true situation, and by concealing such "situation from them and with the express understanding "that the then maturing notes of L. Candee & Co., aggregat- "ing $44,990, should be paid as they matured absolutely "and unconditionally, and which notes matured in January "and the following February and March." (Exception. Rec., 629; Assignment of Error, Rec., 686.)

Eleventh. "Because the Master has found that the tes- "timony does not show that the parties were influenced "in making the January arrangement, upon a belief of the "insolvency of the Fargo Company at that time, and the "conduct of the corporation afterwards and until about the "time of the entering up of the judgment notes, in the "Master's judgment, clearly indicated a hope and expecta- "tion that the Fargo Company would be finally relieved of "its troubles; whereas the testimony shows that the Master "should have found that the conduct of Johnson and the "Rubber Companies in making the January arrangement, "was precisely what would have been done by them if they "had known of the bankrupt condition of the Fargo Com- "pany at that time, and the testimony shows that Johnson "did know of the insolvent condition of the Fargo Com- "pany at that time, and therefore insisted upon the Janu- "ary arrangement as carried out, and this knowledge fur- "nished both the reason for the making of the arrangement, "and the method by which it was carried out, and included

" in the arrangement the probable contingency of the final " failure of the company by providing for the assignment " of all its accounts; that Johnson did believe that the Fargo " Company was insolvent, is further evidenced by the new " and additional precautions taken to protect the interests of " the Rubber Companies in the consigned goods and the " proceeds." (Exception, Rec., 629; Assignment of Error, Rec., 686.)

Twelfth. " Because the Master finds that the general " creditors of the company from whom goods were purchased " between January and August, 1896, were substantially the " same as prior to that period, whereas such finding is not " justified by the evidence, and the evidence shows that the " goods were purchased from a large number of new credi- " tors, aside from those mentioned in this report." (Exception, Rec., 630; Assignment of Error, Rec., 686.)

II.

The Circuit Court's Decree of Distribution, and the Errors Assigned Thereon.

The Circuit Court made no special finding of facts in its decree, except with reference to the claim of the Metropolitan National Bank, to which we will refer later on—but approved the Master's report. (Rec., p. 638.) It thereupon decreed that the judgments of the United States Rubber Company, L. Candee & Co. and the Metropolitan National Bank, the deed from Fargo & Co. to the bank covering the Dixon property, and the assignment of the accounts, etc., to the United States Rubber Company were fraudulent in law as to the creditors whose claims accrued after January 6, 1896, though not at the time believed by the parties to be such, but on the contrary, believed to have been within their legal rights; that the judgments, conveyances and assignment be annulled, set aside and held for naught, and that

the bank convey the real estate to the receiver. (Rec., 638-9.) It further directed that the receiver should distribute the fund *pro rata* among the creditors who had proved their claims, and the two Rubber Companies and the Bank.

This part of the decree we contend was erroneous in the following respects:

1. The court should have held that the conduct of the two Rubber Companies and the bank was so far fraudulent and inequitable, as against the Respondents, that their claims should have been postponed in payment to those of the latter. Their conduct amounted in substance to a deception, whereby these creditors were induced to give credit to Fargo & Co., and as they intended to induce the giving of this credit, and then, if the company failed, to prevent those who thus became creditors from collecting their claims, they should not be allowed to share on an equality with those who were thus defrauded. It makes no difference that they —in the language of the decree—believed what they did "to be within their rights." There is no legal method of violating the law, nor can a deception be justified, to the prejudice of the person deceived by a belief that no harm would in fact come of it, or that the law justified that kind of a fraud.

The Circuit Court should therefore have directed, as did the Court of Appeals, that the fund be distributed among the creditors named in the decree, excluding the United States Rubber Company, L. Candee & Co. and the Metropolitan National Bank.

The points above presented are also covered by assignments of error, numbered 18, 19, 20 and 25, 26, 27, to which we refer. (Rec., pp. 689-692 and 675-677.)

III.

The $10,000 Procured from the Metropolitan National Bank at the Time of the Failure and Included in its Judgments.

As to this $10,000, the Master found that when it was procured Charles E. Fargo stated to Mr. Keith that the company owed him and his brothers more than that amount for money raised on their individual notes, secured by their bank stock as collateral, and which had been paid to the company for use in its business; and that if the Bank would loan the company that amount so that it could pay him and his brothers, and enable them to take up their notes, he would procure from the company judgment notes covering the Bank's entire claim, including this $10,000; that the Bank acceded to this proposition and loaned the $10,000, receiving two judgment notes of $25,000 each; that at the time of completing the arrangement the Bank did not know of the change in the directors, or in the by-laws of Fargo & Co., but did know that the Rubber Companies were also entitled to enter judgment on their notes (Rec., 169), and that the Bank was not shown to have been guilty of any actual fraud against the other creditors. (Rec., 171.)

These conclusions of the Master we contend were erroneous. The exceptions to his report attacking them, which were all overruled by the court, were as follows:

Thirteenth. "Because the Master erroneously states in "his report that on or about August 3, 1896, Charles E. "Fargo stated to the president of the Metropolitan National "Bank that his company would be obliged to fail unless it "received some assistance, whereas, the fact is, as shown by "the evidence, that Charles E. Fargo called upon the presi- "dent of the Metropolitan National Bank for the purpose

"of borrowing $10,000 for the benefit of himself and his "brothers, and for their private uses, according to the testi- "mony; and the Master should have found that at this in- "terview Fargo explained to Mr. Keith that his company "was about to fail, and his transactions with him with ref- "erence to the loan of $10,000 were in contemplation of its "immediate failure." (Exception, Rec., 630; Assignment of Error, Rec., 687.)

Fourteenth. "Because the Master states that at the time "of said interviews the said C. E. Fargo represented to the "president of said Bank that the said C. H. Fargo & Co. "was indebted to him and his brothers for money exceeding "$10,000 which they had borrowed upon their notes for the "benefit of the company and which they had paid over to "the company for use in its business and that said Fargo "brothers had put up some bank stock that they owned as "collateral to said notes; and C. E. Fargo thereupon pro- "posed to said Bank that if it would loan said C. H. Fargo "& Co. $10,000 in addition to its then existing loan, so that "said company could reimburse him and his brothers and "enable them to take up said notes, he would procure from "the said C. H. Fargo & Co. judgment notes for said Bank, "both for said sum so advanced as aforesaid, and also for "notes then remaining due said Bank to the amount of $40,- "000, whereas the Master should have found that Mr. Fargo "told Mr. Keith that his company was about to fail; that "the Rubber Companies held judgment notes for the amount "of their claims and had held them since January; that he "and his brothers, in view of the failure of the company, "had to have some money for the private benefit of himself "and his brothers, and that he wished to have an additional "loan of $10,000 made on the company's paper for that "purpose, stating that he thought the company owed it to "him and his brothers, and that if the Bank would advance "this money to be used for this purpose, Fargo would obtain "for the Bank the same preferential security for the entire "claim, including $10,000, as the two Rubber Companies "had already obtained, and were about to enforce; that the "president of the Bank acceded to this request and loaned

"$10,000 with knowledge of the purpose for which it was "intended to be used, and that the money so obtained was "thereupon divided between Charles E. Fargo and his two "brothers." (Exception, Record, 631; Assignment of Error, Rec., 687.)

Fifteenth. "Because the Master erroneously finds that "the Metropolitan National Bank did not know of the "change in the board of directors or of the by-laws of Fargo "& Company at the time it completed the arrangement for "the loan of the $10,000 and the procuring of security for "its claim against Fargo & Company, whereas he should "have found that the Bank loaned said money and com- "pleted the transaction of obtaining security with full know- "ledge of those facts, and for the purpose of getting the "some preferences before then given to the Rubber Com- "panies." (Exception, Rec., 631; Assignment of Error; Rec., 688.)

Sixteenth. "Because the Master has found and stated "that the Metropolitan National Bank is not shown to have "been guilty of any actual fraud as against complainant and "the other creditors of the Fargo Company by reason of any "of its transactions with Fargo & Co., or the Rubber Compa- "nies, whereas he should have found that said Bank was guil- "ty of actual fraud in connection with said transactions, and "took its security for the purpose of hindering, delaying and "defrauding the other creditors and with knowledge of the "intent with which the securities had been given to the Rub- "ber Companies." (Exception, Rec., 632; Assignment of "Error, Rec., 688.)

Seventeenth. "Because the Master should have found "that the $10,000 which was advanced by the Metropolitan "National Bank in August, 1896, was procured by Fargo "in the name of the corporation, but for the personal use "of himself and his brothers, and in view of the fact that the "corporation was unable to pay all its creditors and was "then about to fail, and that its property was to be immedi- "ately seized under executions in favor of the Rubber Com- "panies and in favor of the Bank, both for its old indebted- "ness and for the $10,000 thus added, and that all of these

"facts were known to the Bank at the time it loaned its "money and procured the judgment notes and the deed of "the Dixon property, and were known also to the representa- "tives of the Rubber Companies at the time they took the "assignment of the accounts and entered judgment on their "notes, and at the time they made the agreement with the "Bank by which both parties agreed to unite their efforts "in the enforcement of their respective claims." (Exceptions to the Master's report, and each of them, and that this tion, Rec., 633; Assignment of Error, Rec., 688.)

We contend that the court erred in overruling these exceptions fraud which tainted the whole transaction, and that in any event the bank could not enforce as against other creditors the payment of this $10,000. The corporation at that time loan for the personal benefit of the Fargos was an actual was concededly insolvent, so that the rule which prohibits directors and officers from using their official position to secure a preference for their own claims was in full force. The Fargos could not have given a judgment note to themselves and enforce it against other creditors, for whom they were trustees. These facts the bank knew, and it knew also that in the transaction they were not representing, or seeking to secure, the interests of the corporation, but their own. Fargo's agency for the corporation was purely fictitious and illegal, for it was an agency in which he sought to use its name for his personal benefit. Of this the Bank, even on its President's testimony, concededly had knowledge. Fargo's own testimony was that he told Keith that as the company was going to fail he and his brothers wanted $10,000 because they had to have something to live on, and if Keith would give it to them they would give him the company's judgment notes for the whole claim and put him on the same footing as the Rubber Companies. (Rec., 191, 192.) He was an adverse witness, with no possible interest in coloring

his testimony in favor of the complainants, and no one can doubt that this is substantially what took place.

We further contend that the judgments of the Rubber Companies and their assignment of accounts were likewise tainted and permeated with the fraud connected with this $10,000 transaction, for it was consummated with their full knowledge, approval and active assistance, and at the same time the Rubber Companies had entered into a contract with the Bank by which they were entitled to share *pro rata* in the proceeds of the Bank's fraudulent claim of $50,000, and the Bank was likewise entitled to share *pro rata* in the Rubber Companies' judgments and assignment of accounts, *i. e.*, all the claims and securities of all the parties were pooled and intermingled in a sort of partnership arrangement, and thereby became one joint matter.

These points are also covered by assignments of error numbered 23, 28 and 30 to which we refer. (Rec., 690-692.)

IV.

The Amount at which the Claim of the Metropolitan National Bank was Allowed in the Decree.

With the $10,000 (which was advanced as a part of the scheme of failure) included, the total debt of the bank was $50,000. It surrendered the plain notes theretofore given by Fargo & Co. and received two judgment notes of $25,000 each. It is entirely undisputed that by express agreement one of these notes was paid by the transfer of the Dixon property, and the note cancelled and surrendered. This was admitted in the answer of the Bank (Rec., 114), testified to by all the witnesses, and Fargo had the cancelled note

in his possession when on the stand. (Rec., 199.) Mr. Porter, the attorney for the Rubber Companies, testified that the Bank's debt was thus reduced to $25,000, and that by the pro rating agreement between it and his clients, the latter were entitled to share in anything the Bank received from the land. (Rec., 455.;)

The Circuit Court in its decree, however, found that at the time the receiver was appointed in this cause (January 18, 1897), there was due from C. H. Fargo & Co. to the Bank the sum of $50,000 (Rec., 639), and distribution was awarded to it on that basis—concededly a false one.

It was shown that after the appointment of the receiver a mechanics' lien suit was begun against the property to enforce the claims of creditors of Fargo & Co. existing when the deed was given. The Bank allowed the suit to go by default and thus lost its title to the land, which was sold under the decree in that suit. At the hearing the complainant presented and asked leave to file an amendment, stating these facts, and withdrawing its prayer that the Bank be required to surrender the land, but on the objection of the defendants the leave was denied. (Rec., 252.)

We contend that the complainant had a right to withdraw its claim for relief against this property; that these facts precluded the court from making any decree against the property, and that the Bank having, without any fraud or imposition being practiced upon it, deliberately taken the deed in satisfaction of $25,000 of its debt, cancelled the note, asserted in its answer that the debt was paid, and its title under the deed unassailable, and having defended the suit on that theory without a change of front from start to finish, the court erred in giving it a benefit from its fraud in restoring its cancelled debt and enforcing it against the

creditors when it could not have been enforced against the debtor.

This point is presented by assignments of error, numbered 1 and 23, to which we refer. (Rec., 682, 690; also 668, 676.)

NOTE. Separate exceptions to the Master's report were filed by certain intervenors who joined as appellants in the cross-appeal in the Court of Appeals and are Respondents here. These exceptions, which were likewise all overruled by the court, challenge the correctness of the Master's report on substantially the same grounds, and in the same respects as the exceptions of the other Respondents, which have already been quoted in this specification of errors, but they are couched in somewhat different language. The overruling of these separate exceptions is made the basis of separate assignments of error on the part of intervenors by whom they were filed. We have quoted these exceptions verbatim and make them a part of this specification of errors, but in order to avoid confusion of statement, they are printed separately from the foregoing specification of errors:

These exceptions, which were all overruled by the court, are as follows:

Exceptions directed against the findings of the Master regarding the January arrangement and the motives and conduct of the parties in that connection.

First. For that the Master finds that the Rubber Companies were in ignorance of the fact that on January 6, 1896, the assets of the Fargo Company were insufficient to discharge its indebtedness.

Whereas the Master should have found that the insolvency of the Fargo Company and its then imminent suspension

were the first facts called to the attention of the Rubber Companies in January at the Auditorium meetings, and were the reasons why the Rubber Companies' representatives were summoned to Chicago. (Exception, p. 611; Assgt. of Error, Rec., 668.)

Second. For that the Master fails to find that the Rubber Companies at first refused to make any loan or advance to the Fargo Company, and demanded that the Fargo Company should prefer the Rubber Companies to the exclusion of all other creditors, which the Fargo Company refused to do, and stated that if the Rubber Companies refused to advance the $50,000 the Fargo Company would make an assignment and treat all of its creditors on an equality, and that thereupon the Rubber Companies, in order to prevent the Fargo Company from doing this, consented to make the $50,000 advance, on condition that the January arrangement would be carried out.

Whereas the Master should have so found. (Exception, p. 623; Assgt. of Error, Rec., 668.)

Third. For that the Master finds that the change of the board of directors and the officers and the changes of the by-laws of the Fargo Company and the resolution authorizing the judgment notes and assignment of accounts, were all for the purpose of giving preferential security to the Rubber Companies, and that the only purpose of changing the board of directors and amending the by-laws, was to protect the Rubber Companies against the giving by the Fargo Company of preferential securities or judgment notes to other creditors which should be superior to the security of the Rubber Companies;

Whereas, the Master should have found that the change in the personnel of the board of directors and in the by-laws

of the company was made for the purpose of withdrawing from the officers of the company all power of giving to any other creditor security for his debt, and for the purpose of preventing other creditors from collecting their claims until the claims of the Rubber Companies were paid in full, and for the purpose of placing the Fargo Company and all its assets in the absolute control of the two Rubber Companies so that the two Rubber Companies might make any disposition of the Fargo Company and its assets which they saw fit, in their own interest, and to the exclusion of all other creditors. (Exception, p. 609; Assgt. of Error, Rec., p. 668.)

Fourth. For that the Master finds that the change in the board of directors and officers, and the changes in the by-laws of the Fargo Company were kept secret in order to allow the Fargo Company an opportunity of getting through embarrassments apparently temporary, but not with a fraudulent intent as to the other creditors of the company;

Whereas, the Master should have found that in order to secure and preserve the credit of the Fargo Company and to enable it and its agents to purchase merchandise on credit after January 6, 1896, it was expressly understood and agreed and insisted upon as a part of said January arrangement, by all parties thereto, that the same should be kept and maintained secret and unknown to the world, and that the same were so kept and preserved secret and unknown to the world, with a fraudulent intent as to the other creditors of the Fargo Company. (Exception, p. 610; Assgt. of Error, Rec., p. 669.)

Fifth. For that the Master finds that the advance of $50,000, and the giving of the judgment notes and security in question was the result of an evident feeling on the part of all the parties to the transaction, and in the belief

and expectation on their part, that through the assistance which was in this way afforded the Fargo Company, it would be enabled to continue its business successfully, and become ultimately relieved of its financial embarrassment, and that such arrangement was entered into in good faith, and without any fraudulent intent;

Whereas, the Master should have found that said January arrangement was not the result of any such feeling, belief or expectation, and was not entered into in good faith and without fraudulent intent.

And whereas also the Master should have found that the Rubber Companies and their agents had no confidence, either in the financial condition of the Fargo Company, or in the honesty and personal integrity of the Fargos themselves, and, therefore, secured control of the corporation by controlling its board of directors and officers, compelled the Fargo Company to set apart one of its floors as the store room of the Rubber Companies, wherein to keep their consigned goods; to deposit the proceeds arising from the sale of consigned goods in a separate bank account; to keep separate books and records of all transactions between the Rubber Companies and the Fargo Company, and employed every possible agency to protect themselves, as a cautious man would have done had he believed the Fargo Company hopelessly insolvent and the Fargos themselves personally dishonest. (Exception, p. 612; Assignment of Error, Rec., p. 670.)

Sixth. For that the Master finds that the testimony does not show that the parties were influenced in making the January arrangement by belief of the insolvency of the Fargo Company at that time, and that the conduct of the corporation afterwards, and until about the time of the entering up of the judgment notes, clearly indicated the hope and ex-

pectation that the Fargo Company would be finally relieved of its troubles.

Whereas the Master should have found that the parties were not influenced by any such belief, and that the conduct of the corporation did not indicate any such hope or expectation, but that, on the contrary, the parties were influenced in making the January arrangement, by a firm conviction that the Fargo Company at that time was insolvent, and that its continuance in business could only be temporary, and that the January arrangement was the only possible means by which the Rubber Companies could avoid the almost certain loss of a large proportion of their claims against the Fargo Company, including the consigned goods then on hand, in all amounting to over $300,000. (Exception, p. 613; Assignment of Error, Rec., p. 671.)

Seventh. For that the Master fails to find that the formation of the January arrangement,in itself,and the operations of the Fargo Company and the Rubber Companies thereunder were an actual fraud on the persons, firms and corporations which sold merchandise or loaned money to the Fargo Company from and after January 6, 1896, and whose claims, or any part thereof, for such merchandise and loans, have not been paid, irrespective of the transactions and arrangements entered into and done by and between the Rubber Companies, Charles E. Fargo, the Fargo Company and the Metropolitan Bank in August, 1896.

Whereas the Master should have so found. (Exception, p. 622; Assignment of Error, Rec., 668.)

For that the Master finds that nothing occurred between January 6 and August 6, 1896, inconsistent with the theory that the business of the corporation was carried on with an evident purpose and expectation of continuing same.

Whereas the Master should have found that the course of dealing after January 6, 1896, demonstrated that the Rubber Companies were substantially convinced during all that period that the financial condition of the Fargo Company was practically hopeless and that its final collapse could only be temporarily delayed. (Assignment of Error, p. 671; Exception, p. 614.)

For that the Master fails to find that by reason of the control which said Rubber Companies exerted over the Fargo Company by means of said January arrangement, said Rubber Companies, from and after January 9, 1896, constituted substantially the Fargo Company, and that the goods, wares and merchandise so purchased by the Fargo Company from and after January 9, 1896, were in substance and in fact purchased by said Rubber Companies.

Whereas the Master should have so found. (Assignment of Error, p. 678; Exception, p. 622.)

Exceptions directed against the findings of the Master regarding transactions with the Metropolitan Bank in August.

Eighth. For that the Master finds that on or about August 3, 1896, Charles E. Fargo stated to the president of the Metropolitan Bank that the Fargo Company would be obliged to fail unless it received some assistance.

Whereas the Master should have found that Charles E. Fargo did not apply to, or suggest that said Bank should furnish the Fargo Company any assistance, but on the contrary, it is clearly shown by the evidence that Charles E. Fargo called upon the president of the Metropolitan Bank, on or about August 4, 1896, for the purpose of borrowing $10,000 for the benefit of himself and his brothers, and for their private use, and that at this interview he explained to

said president that the Fargo Company was about to fail, and that all the transactions had by Charles E. Fargo with said Bank in relation to said proposed loan of $10,000 were had in contemplation of the immediate failure of the Fargo Company. (Exception, Rec., 614; Assignment of Error, Rec., 672.)

Ninth. For that the Master finds that the Metropolitan National Bank did not know of the change in the board of directors or of the by-laws of the Fargo Company at the time it completed the arrangement for the loan of the $10,000 and the procuring of security for its claim against the Fargo Company.

Whereas the Master should have found that the Metropolitan Bank first obtained the two judgment notes for $25,000 each, and the agreement by which it was to share and pro rate with the Rubber Combanies in the securities they held, before it paid the $10,000 over to Charles E. Fargo, and that said $10,000 were so paid, with full knowledge on the part of the Bank concerning the January arrangement made with the Rubber Companies, and was not, in fact, paid over to the Fargos until all the arrangements had, on August 4, 5 and 6, as shown by the resolutions of the Fargo Company and the acts of its officers, had been consummated. (Exception, 615; Assignment of Error, Rec., 672.)

Tenth. For that the Master finds that the Metropolitan National Bank is not shown to have been guilty of any actual fraud as against complainant and the other creditors of the Fargo Company by reason of any of its transactions with the Fargo Company or the Rubber Companies.

Whereas the Master should have found that said bank was guilty of actual fraud in connection with said transactions, and took its security for the purpose of hindering,

delaying and defrauding the other creditors, and with knowledge of the intent with which the securities had been given to the Rubber Companies, and that the Fargos would appropriate the $10,000 loaned to them, to their own sole use and benefit, and place the same beyond the reach of the creditors of the Fargo Company. (Exception, 616; Assignment of Error. Rec., 673.)

Respectfully submitted.

JACOB NEWMAN,
GEORGE W. NORTHRUP,
S. O. LEVINSON and
BENJ. V. BECKER,
For Respondents.

Supreme Court of the United States.

No. 150.—October Term, 1900.

The United States Rubber Company, L. Candee & Company and The Metropolitan National Bank, Petitioners,
vs.
The American Oak Leather Company et al.

On writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[May 13, 1901.]

On September 11, 1896, the American Oak Leather Company, a corporation of the State of Ohio, filed, in the Circuit Court of the United States for the Northern District of Illinois a bill of complaint against C. H. Fargo & Company, a corporation of the State of Illinois; the United States Rubber Company, a corporation of the State of New Jersey; L. Candee & Company, a corporation of the State of Connecticut; John W. Arnold, United States Marshal for the Northern District of Illinois, and the Metropolitan National Bank, a national banking association.

The bill alleged that the complainant was a judgment creditor of C. H. Fargo & Company, an insolvent corporation; that judgments by confession against said C. H. Fargo & Company had been entered in the Circuit Court of the United States on August 6, 1896, for large amounts in favor of the United States Rubber Company and L. Candee & Company; that, on the same day, an assignment was made by C. H. Fargo & Company of all its book accounts to said rubber companies; that a judgment by confession had been entered on August 6, 1896, for a large amount, in favor of the Metropolitan National Bank, and on the same day deeds to said bank had been executed by Fargo & Company, conveying its factory at Dixon, Illinois; that executions had been issued on said judgments and levied upon all the tangible assets of C. H. Fargo & Company; that said judgments were illegal because given and taken with intent to defraud the complainant and other creditors of C. H. Fargo & Company. The bill prayed that the said judgments, executions, assignment and deeds should be set aside, and that the assets of C. H. Fargo & Company should be applied, through a receiver, to the payment of its *bona fide* creditors.

Subsequently other creditors to a large amount filed intervening petitions, and joined in the complainant's prayer for relief. Answers were filed by the several defendants, denying the allegations of fraud; and thereupon the court referred the case to Henry W. Bishop as a master in chancery,

"to take proofs herein and report the same, together with his conclusions thereon, as to the facts only." An order was also entered appointing a receiver, and upon appeal to the Circuit Court of Appeals for the Seventh Circuit this order was affirmed. (82 Fed. Rep. 348.)

On April 17, 1899, after taking a large amount of testimony, and a protracted hearing, the master filed a report, of which the important portions were as follows:

"There was due January 6, 1896, to Candee & Company, upon the notes of C. H. Fargo & Company, (given in settlement in November, 1895,) the sum of $44,900, and on the same date there was due from the Fargo Company to the United States Rubber Company on open account for proceeds of sale of consigned goods the sum of $141,537.13.

"It is shown by the testimony, and I so find, that about January 2, 1896, the C. H. Fargo Company, anticipating difficulty in meeting its regular obligations maturing during that month, applied to one Charles L. Johnson, who represented both the Candee Company and the United States Rubber Company, for a loan of $50,000, representing that the Fargo Company was perfectly solvent, and that this accommodation would relieve it from its temporary embarrassments and enable it to go on with its business.

"This application was granted, and on January 6, 1896, Johnson agreed, acting for L. Candee Company, to lend the Fargo Company the sum of $50,000 for six months, upon the understanding that this loan and the indebtedness of $44,900 upon the notes previously given as aforesaid and the balance due the United States Rubber Company, and which might become due it, should be secured in such a way as might be satisfactory to their counsel, Mr. Beale, of the law firm of Isham, Lincoln & Beale.

"The proposition was accepted on the 6th day of January, 1896, and it was agreed and arranged between the parties as follows:

"First. That the $50,000 should be advanced to the Fargo Company by L. Candee & Company, partly on that date and during the succeeding two weeks.

"Second. That the Fargo Company should that day execute and deliver its three judgment notes, one for $45,000, payable on demand to the order of L. Candee & Company, to secure that company with respect to its liability as endorser or guarantor upon the notes for $44,900 given previous to January, 1896; one for $51,500, payable on demand to L. Candee & Company, as collateral security to plain notes of the Fargo Company, which were given as evidence of the advance of $50,000 then to be made, and one for $140,000, payable on demand to the order of the United States Rubber Company, as collateral security to the then existing and to any future indebtedness of the Fargo Company to the United States Rubber Company as aforesaid.

"Third. That in case the Fargo Company should at any time find it necessary to suspend business, it would assign as additional security all its accounts and bills receivable; that it should not give any judgment notes to other creditors which would impair the security to the Rubber Companies, and that the $50,000 advance should be used by the Fargo Company in reduction of its general indebtedness as it matured; and

"Fourth. That the four employees of the Fargo Company who were on the board of directors, and also E. A. Fargo, should retire from the board

and there should be elected in their places by the stockholders of the company five persons, to be nominated by said Beale, in whom he had confidence, one of whom should become secretary and treasurer, and that the directors so to be elected at Beale's nomination should not hamper or interfere with the proper carrying on of the ordinary business of the company.

* * * * * *

"I find that the attention of the general creditors was never called to this arrangement and they had no knowledge of it. The Metropolitan National Bank first learned of it at or about the time a judgment note was given it to secure the payment of its claim of $50,000 as hereinafter stated.

"I find that in pursuance of this arrangement, and on January 6, 1896, a meeting of the board of directors of the C. H. Fargo & Company was had before any change in said board, when a resolution was passed authorizing the borrowing of the $50,000, the giving of judgment notes, as in said agreement provided for, and assignment of the accounts, bills and choses in action upon the contingencies agreed upon; and upon the same day the three judgment notes referred to were executed and delivered by Charles E. Fargo, president of the company; Frank M. Fargo, vice president and treasurer, and E. A. Fargo, secretary, and the loan of $50,000 was perfected. $10,000 being advanced at the time and the balance of $50,000 during the succeeding two weeks.

"This action was ratified on the 8th day of January, 1896, by the unanimous vote of the stockholders of C. H. Fargo & Company, all the shares being represented.

"I find that in pursuance also of said arrangement, and as a part of it, at a meeting of the stockholders of C. H. Fargo & Company, held January 9, 1896, George C. Madison, Tiffany Blake, Buell McKeever, Frederick B. Fuller, Gilbert E. Porter, Charles E. Fargo and F. M. Fargo were duly elected directors for the ensuing year.

"The first five, except Blake, were employees in the office of Willian G. Beale, and said Blake was assistant corporation counsel of the city of Chicago, of which William G. Deale was then corporation counsel, and all five were elected by the stockholders at the suggestion of said Beale. Subsequently, at a meeting of the newly constituted board, at which Charles E. Fargo was re-elected president of the company, Frank M. Fargo was re-elected vice president of the company and Buell McKeever was elected secretary and treasurer of the company, the by-laws of the company were amended providing against the giving of judgment notes or preferential security without special authorization of the board of directors.

"I also find that the change of the board of directors and officers, and the changes of the by-laws of said company and the resolution thereof authorizing judgment notes and assignments of accounts if necessary, were all for the purpose of giving preferential security to the rubber companies, and the matter was kept secret in order to allow the Fargo Company an opportunity of getting through embarrassments apparently temporary but not with a fraudulent intent as to the other creditors of the company. The only purpose and object of changing the board of directors as aforesaid and of amending the by-laws was to protect the rubber companies against the giving by the Fargo Company of preferential security or judgment notes to other of its creditors which should be superior to the security of the rubber companies.

"I further find that the arrangement as made was carried out in good faith by the parties, and that the directors elected at the suggestion of said Beale took no part in the active management of the Fargo Company after their election, and that no stockholders' or directors' meetings of the Fargo Company were held after January 9, 1896, until August 5, 1896.

"I find that on January 9, 1896, which was the date of the meeting of the new directors, the authorized capital stock of the said corporation of C. H. Fargo & Company, was $400,000, and the debts of the corporation on January 6, 1896, as follows:

Amount owing United States Rubber Company	$141,537 13
Amount owing Candee & Company	44,900 00
Amount owing Metropolitan National Bank	50,000 00
Amount owing other creditors	210,216 20
Total	$446,653 33

"I find that the value of the assets of C. H. Fargo & Company at that time had not been definitely ascertained, but I find, as a matter of fact, as the results of efforts since made in collecting the same in liquidation and from other sources of information disclosed by the testimony, that on the 6th day of January, 1896, the assets of said company were not sufficient to discharge its indebtedness, of which fact the defendants, the rubber companies, are shown to have been ignorant, relying upon the representation of the Fargos that there was a large excess of assets over liabilities. The fact that Johnson, representing the rubber companies, made no detailed examination of the assets of the company, but consented to advance the money which was applied for, is evidence to my mind that he believed in the assurances which were given him by the Fargos of the condition of their company.

"I further find that between January 6, 1896, and August 6, 1896, the new liabilities incurred by said corporation to creditors other than the rubber companies and the bank were $246,660.54, (of which there was due and unpaid on August 6, 1896, $142,690.95,) and that during the same period the Fargo Company paid out more than $300,000 to its general creditors in the regular course of business, paying substantially all of the indebtedness of January 6, 1896, which was largely to the same persons who are now creditors.

"I further find that between January 6 and August 6, 1896, the Fargo Company continued its business as before, reducing its general indebtedness to a considerable extent with its general creditors; that during said time it paid Candee & Company $44,900, the amount of its indebtedness prior to January 6, 1896, and $13,470 on account of the advance of $50,000 as aforesaid; that during said time it paid to the United States Rubber Company $15,000 on account of the indebtedness to that company existing January 6, but it also sold consigned goods of that company to the amount of $24,534.04, of which it remitted only $5,495.40; and that on August 6, 1896, there was due to the United States Rubber Company the sum of $142,424.81, and to L. Candee & Company the sum of $36,530.

"I further find from the testimony that the indebtedness of the Fargo Company, which was incurred after January 9, 1896, up to the time of the entry of judgment upon the judgment notes referred to, was incurred in ignorance of the giving of the judgment notes and the change of

directors, and of the change of officers, and of the arrangement existing between the rubber companies and the Fargo Company, and that the amount of the claims that were thus contracted and is still unpaid exceeded $110,000.

"I find that while Johnson and Sadler, representing the rubber companies, were here from January 2 to January 6, 1896, that it was then agreed that separate books showing sales of consigned goods should be kept, and the proceeds of the sales thereof should be kept in a separate bank account, which was done.

"I find that the advance of $50,000 on January 6, 1896, and the giving of the judgment notes and security referred to, was the result of an evident feeling upon the part of all the parties to the transaction, and was in the belief and expectation on their part, that through the assistance which was in this way afforded the Fargo Company it would be enabled to continue its business successfully and become ultimately relieved of its financial embarrassment, and that said arrangement was entered into in good faith and without any fraudulent intent.

"I find that the testimony does not show that the parties were influenced in making the arrangement aforesaid upon a belief of the insolvency of the Fargo Company at that time, and the conduct of the corporation afterwards and until about the time of the entering up of the judgment notes, in my judgment, clearly indicated the hope and expectation that the Fargo Company would be finally relieved of its troubles.

"In support of this conclusion I find that in the meantime and between January 6, 1896, and August, 1896, in the regular course of its business the Fargo Company reduced, to a large extent, the indebtedness which existed on January 1, 1896, increasing the capacity of their manufacturing business, reducing its stock and discharging, to a large extent, its general liabilities, except with the United States Rubber Company and the Metropolitan National Bank, with an evident purpose and expectation of continuing its business; during which time nothing is shown to have occurred with these parties inconsistent with this theory.

"I find that during this period the general creditors were substantially the same as before, with the exception of the Eagle Tanning Works of Chicago, whose claim of $2,500.24 has been established, for the goods purchased on credit between April 1, 1896, and July 15, 1896, and Wilder & Company, and the Pfister & Vogel Leather Company, hereinafter mentioned.

* * * * * *

"And I also find that during this time upon the letterheads of the C. H. Fargo Company the printed names of the Fargos, treasurer and secretary, appeared as before, without anything to show any change in the construction or management of said corporation, nor were such changes in any way mentioned, or their real condition disclosed.

* * * * * *

"I further find that during many years prior to January 6, 1896, the C. H. Fargo Company had been doing business with the Metropolitan National Bank of this city, its bankers, resulting in the creation from time to time of a large indebtedness to said bank, which was finally reduced, in the usual course of business, so that on the fifth day of August, 1896, said indebtedness amounted to the sum of $40,000.

"That the Metropolitan National Bank, during the summer of 1896, applied to C. H. Fargo & Company to reduce its indebtedness to it and to finally discharge it by the month of November following.

"I further find that at the same time said bank gave the C. H. Fargo Company said notice, and down to about the 3d or 4th day of August, A. D. 1896, it had no knowledge of any transactions which occurred between it and the rubber companies in the previous month of January, and that it did not know of the change in the board of directors of said C. H. Fargo & Company, or that it had given the rubber companies judgment notes for an indebtedness owing by it to said rubber companies, or of the agreement which had been entered into in respect to the same between it and the rubber companies, or of the action which had been taken by the newly-constituted board in pursuance of this agreement.

"I further find that on or about Monday, the 3d day of August, A. D. 1896, Charles E. Fargo, president of the said C. H. Fargo & Company, called at the Metropolitan National Bank, and while there applied to the bank for an additional loan of $10,000.

"I find that during this interview, or shortly thereafter, the said Charles E. Fargo informed the president of said bank that the said C. H. Fargo & Company had given the rubber companies judgment notes for the amount of its indebtedness to them, and while said C. E. Fargo insisted that the assets of his company were at that time largely in excess of its indebtedness and ample to meet the entire amount thereof, that, owing to the difficulty in making its collections as rapidly as its outstanding paper matured, his company would be obliged to fail unless it received some assistance.

"I find that at the time of said interviews the said C. E. Fargo represented to the president of said bank that the said C. H. Fargo & Company was indebted to him and his brothers for money exceeding $10,000 which they had borrowed upon their notes for the benefit of the company, and which they had paid over to the company for use in its business, and that said Fargo brothers had put up some bank stock that they owned as collateral to said notes, and C. E. Fargo thereupon proposed to said bank that if it would loan said C. H. Fargo & Company $10,000 in addition to its then existing loan, so that said company could reimburse him and his brothers and enable them to take up said notes, he would procure from the said C. H. Fargo & Company judgment notes for said bank, both for said sum so advanced as aforesaid, and also for notes then remaining due said bank to the amount of $40,000.

"I further find that said bank acceded to said proposition, and loaned said C. H. Fargo & Company said additional sum of $10,000, receiving two judgment notes of the Fargo Company for the sum of $25,000 each, crediting to the account of said C. H. Fargo & Company in said bank said sum of $10,000.

"I further find that at the time of the completion of this arrangement with said bank neither the bank nor its officers nor attorneys had any knowledge of the change of the board of directors of the said C. H. Fargo & Company, or of its by-laws, but the bank did know that the rubber companies, as a part of the final arrangements made, were entitled equally with themselves to enter judgment upon the judgment notes which had been given.

"I further find that neither the complainants herein nor any of the other creditors of the said C. H. Fargo & Company were led to give credit

to said company by reason of the transactions had between it and the bank, nor did any of the said parties sell any goods to said C. H. Fargo & Company subsequent to the time when said bank made said $10,000 loan aforesaid to C. H. Fargo & Company, nor did the said bank in any way participate in or have any knowledge of the change in the by-laws of said C. H. Fargo & Company as aforesaid.

"I further find that from about the time when the said judgment notes were given to said bank, as aforesaid, the said bank entered into a stipulation with the rubber companies by which it was agreed that they should unite their efforts to collect their respective claims against the said C. H. Fargo & Company and should share *pro rata* in whatever proceeds should be derived therefrom.

* * * * * *

"I further find upon the testimony submitted to and taken before me in connection with this branch of the case that the defendant, the Metropolitan National Bank, is not shown to have been guilty of any actual fraud as against the complainants or the other creditors of C. H. Fargo & Company by reason of any of its transactions with the said defendants, C. H. Fargo & Company or the said rubber companies.

"I further find that August 6, 1896, before entry of the judgments in favor of the rubber companies as set forth in the pleadings, C. H. Fargo & Company, by its president, C. E. Fargo, duly assigned to the United States Rubber Company all the accounts and bills receivable of the Fargo Company as further security for the indebtedness to the rubber companies, pursuant to and in accordance with the agreement made in January, 1896.

"I find nothing in the testimony which has been taken before me upon this reference which so changes the record which was before the court upon the hearing of the application for the appointment of a receiver as to lead me to a conclusion different from that announced by the court at that time: indeed, the effect of the testimony, in my judgment, is to explain and strengthen the conclusion then expressed by the court, that there was no fraud in fact or want of good faith shown in the conduct of any of the defendants in respect to the transactions complained of; and upon a careful examination of the whole record and testimony I so find and report."

Exceptions filed by the respondents were overruled, and the report was in all respects confirmed.

On May 4, 1899, the Circuit Court, per Circuit Judge Grosscup, entered a decree setting aside the preferences complained of in the bill, as "fraudulent in law, (although not at the time believed by the parties to be such, but, on the contrary, believed to have been within their rights,) as against the other creditors of C. H. Fargo & Company;" and directing the assets in the hands of the receiver, amounting to about $111,000, to be distributed *pro rata* among the creditors, including the defendants. An appeal and a cross appeal were taken to the Circuit Court of Appeals, and that court, on October 3, 1899, reversed the decree of the Circuit Court in so far as it permitted the rubber companies and bank, defendants, to share equally with other creditors in the fund to be distributed.

Thereupon this court, upon the petition of the rubber companies and the Metropolitan National Bank and the cross petition of the complaining creditors, allowed a writ of certiorari to the Circuit Court of Appeals of the Seventh Circuit.

Mr. Justice SHIRAS delivered the opinion of the Court.

This was a case in which the Circuit Court of the United States for the Northern District of Illinois, sitting in chancery, was called upon to administer and distribute the assets of an insolvent corporation. The jurisdiction of the court was invoked by a bill of complaint filed on behalf of unsecured creditors seeking to set aside as fraudulent certain preferences held by the defendants. Pending that controversy, a receiver was appointed, and ultimately a fund was realized for distribution amounting to about $111,000.

The contested questions raised by the bill, intervening petitions and answers were referred to a master to take proofs and report the same "together with his conclusions thereon as to the facts only."

After stating his findings of facts, the master thus stated his conclusions thereon:

"I find nothing in the testimony which has been taken before me upon this reference which so changes the record which was before the court upon the hearing of the application for the appointment of a receiver as to lead me to a conclusion different from that announced by the court at that time; indeed, the effect of the testimony, in my judgment, is to explain and strengthen the conclusion then expressed by the court, that there was no fraud in fact or want of good faith shown in the conduct of any of the defendants in respect to the transactions complained of; and upon a careful examination of the whole record and testimony I so find and report."

The Circuit Court overruled exceptions taken to the findings and conclusion of the master, and confirmed his report.

The conclusions of the Circuit Court were thus expressed in the opinion of Circuit Judge Grosscup:

"After as careful an examination of the evidence as I have been able to give to it, I have come to the following conclusions:

"First. That the intervening creditors have not clearly proven that the rubber company and the Candee Company had any intention to commit a fraud upon the other creditors at the time of the arrangement of January, 1896; on the contrary, I think the weight of proof shows that both these companies believed that, with the help they were about to give Fargo & Company, that company would be able to weather the storm. I am, therefore, of the conclusion that there was no intentional fraud committed.

"Second. The proof on the part of the intervenors has not clearly shown that the ten thousand dollars borrowed from the Metropolitan National Bank upon which the Fargos were personally liable as indorsers did not go into the business of and to the benefit of the Fargo Company; on the contrary, the proof clearly shows that, so far as the Metropolitan National

Bank knew, the money had gone to the company. Under these circumstances I see no reason why the Metropolitan National Bank had not a right to advance the ten thousand dollars additional money. . . .

"Fourth . . . Candee & Company, the rubber company and the bank would, undoubtedly, in January or in August, have had the rightful power to have obtained the judgment notes actually taken. Had they taken judgment thereon, there can be no doubt but that their preference would have been sustained. The vice in the conduct of the rubber company and the Candee Company consisted in their attempting to tie up the corporation against the power to give like preferences in favor of others. It was, in a certain sense, a new attempt; it was in the line of efforts of creditors to secure themselves; it was, on the whole, not ungenerous to Fargo & Company; and did not, considering their rights to have taken judgment notes, and the fact that none of the other creditors attempted to obtain such notes, or any other preference, before the general crash, do any actual injury to the other creditors.

"On the whole, I think the interests of justice will be best subserved by placing them in the class with the other creditors, and compelling them to pay the general costs of this litigation."

In the opinion of the Circuit Court of Appeals there does not appear to have been made any serious attempt to overrule or substantially modify the master's findings of facts; but the conclusion of the Circuit Court permitting the defendants to participate in a *pro rata* distribution of the fund was not approved, and the decree in that particular was reversed by a majority of the court.

In his dissenting opinion Mr. Justice Brown thus expressed his views on the questions of fact:

"I find no testimony to satisfy me that an actual fraud upon the general creditors was intended. . . . The evidence satisfies me that there was a *bona fide* effort to assist the Fargo Company in continuing its business, with the hope of ultimately pulling it through, and that if this attempt had been successful, it would have redounded greatly to the interest of the general creditors. It was natural, at least, that in making this attempt the rubber companies should have endeavored to secure themselves, not only for their immediate outlay of $50,000, but for their prior debts. In palliation of the secrecy which was held to make this constructively fraudulent, it may be said that publicity doubtless would have destroyed the entire scheme of raising money to carry on the business."

Nor has our own examination of the evidence led us to disapprove of the findings of facts by the master, confirmed and adopted by the Circuit Court.

What judgment, then, ought a court of equity to render upon such an ascertained state of facts?

The view of the majority of the Court of Appeals was that the defendants in the court below should not be allowed to participate in the fund until all the other creditors had been paid in full. The result in the present case and in most similar cases would be that the defendants would

get nothing, as the fund would not reach them. This would be a striking exercise of power by a court of equity. Thereby the advantages obtained by remedies on the law side of the court would be transferred to the complainants on its equity side; the preferred would become the unpreferred creditors, and the unpreferred become the preferred creditors.

The common law recognizes in every man the right to dispose of his property as he pleases. If he becomes insolvent, he may pay one creditor, and leave another unpaid. He may secure one and not another by a transfer of assets. Such a condition of things, when left uncontrolled, naturally resulted in great abuses. Under cover or pretence of paying or securing one set of creditors, property actually procured from another would be withdrawn from the reach of the latter. Yet the only remedy afforded by the common law was in the principles of the statute of 13 Elizabeth, c. 5, which have been substantially re-enacted in the various States of the Union. Under those principles a collusive transfer, placing the property of a debtor out of the reach of his creditors, while securing to him its beneficial enjoyment, would be invalid. But an insolvent debtor may prefer a creditor, even though the latter has knowledge of such insolvency and the effect of the preference be to delay or disappoint his other creditors. (*Crawford* v. *Neal*, 144 U. S. 585; *Davis* v. *Schwartz*, 155 U. S. 631.)

The right of an insolvent debtor to prefer one creditor to another exists in the State of Illinois to its fullest extent, and the giving of judgment notes is recognized as a legitimate method of preference. (*Tomlinson* v. *Matthews*, 98 Ill. 178; *Field* v. *Ridgely*, 116 Ill. 424.)

The abuses which are possible in such a state of affairs were among the causes that led to the enactment of bankrupt laws forbidding preferences by insolvent debtors. But, in the absence of such laws, as in the present case, if a remedy is sought in a court of equity against fraudulent preferences, it must be on allegation and proof of a design to defraud and delay the complaining creditor. It does not suffice to show a mere case of a preference intended by an insolvent debtor in paying or securing a *bona fide* creditor, even though the latter was well aware that the natural effect of the preference could work a detriment to other creditors. This was well known to the learned counsel who drew the bill of complaint in the present case, and accordingly we find therein charges that C. H. Fargo & Company, the United States Rubber Company and L. Candee & Company entered into a fraudulent agreement, in and by which it was provided that said foreign corporations should be immediately placed in control of said C. H. Fargo & Company, and have sole and exclusive power and authority to manage, control and direct the business and affairs of C. H. Fargo & Company; that said transfer of control should be effectuated secretly, and to be kept secret, so as to enable C. H. Fargo & Company to continue apparently doing business for a limited time, and that said C. H. Fargo & Com-

pany should continue during said period to purchase merchandise on credit, and should turn the same or the proceeds thereof over to the said foreign corporations, and should secure and prefer said foreign corporations out of the assets and property then owned by C. H. Fargo & Company, and out of the property and merchandise which should be thereafter purchased by C. H. Fargo & Company, to the exclusion of the other creditors, and to defraud, hinder and delay the other creditors; and that it was not intended that C. H. Fargo & Company should *bona fide* continue business, but, on the contrary, it was intended that they should continue in business for a limited time only, and only for the purpose of consummating said fraudulent agreement. The bill further alleges that said agreement was carried out; that a large amount of merchandise was purchased on credit from other creditors, and that, finally, by means of judgment notes and transfers of accounts, the entire assets of C. H. Fargo & Company were levied on for the benefit of the secured creditors; that the claims of the said rubber companies and of the Metropolitan National Bank were considerably less than the amount for which judgments were severally confessed in their favor, and that therefore said judgments so confessed were absolutely null and void, &c.

Without pursuing in further detail the allegations of the bill, it may be conceded that, if satisfactorily sustained by evidence, they would have justified the conclusion that the transactions between C. H. Fargo & Company and the defendants constituted, not an agreement for the purpose of securing *bona fide* creditors, but a conspiracy to hinder, delay and defraud the unsecured creditors of C. H. Fargo & Company. But, as already stated, and as found by the master and the Circuit Court, these incriminating allegations were not sustained, and the conclusion of the master, of the Circuit Court and of the dissenting justice of the Circuit Court of Appeals was that no fraud upon the general creditors was intended or actually carried into effect.

The theory of the Court of Appeals, as forcibly expressed in the opinion of Circuit Judge Woods, would seem to be an application to the facts of the case of the principles of the bankrupt law, with its feature of forbidding preferences. It overlooks, as we think, the legal right of creditors to secure themselves by legal remedies, even though they may result in hardship and loss to others. In stating that the rubber companies were guilty of fraud in fact, we think the Circuit Court of Appeals was not borne out by the findings of the master and of the Circuit Court, nor by the facts as they appear to us; and in holding that, as against other creditors, they and the Metropolitan National Bank should not be allowed to share in the fund for distribution, there was error.

If, in the agreement between C. H. Fargo & Company and the preferred creditors, and the giving and taking of the preferences, there was no actual

fraud upon the other creditors intended, it may not be easy to clearly state the grounds on which a court of equity may deprive the defendants in the bill of the legal advantages thus obtained.

Still, it has often been held that permitting personal property, like a stock of goods, to remain in the possession of an insolvent merchant as a basis for credit, however rightfully intended, is forbidden by the policy of the law. And we adopt the view of the Circuit Court, that "while the policy of the law permits preferences and such preferences as are necessarily unknown to others than those concerned, it does not permit any device which prevents the debtor from giving a like advantage to his other creditors, if he so wishes, unless such device is put in the form of a mortgage or other instrument perpetually open to public inspection upon the public record. . . . The device resorted to accomplished for the Fargos and the favored creditors all that a secret chattel mortgage, with possession and power of sale remaining in the mortgagee, could have accomplished, and must therefore be treated in equity, upon all considerations of justice and reason, as such a mortgage would be treated. . . . The judgment notes themselves would not have been a fraud in law; the assignment of the accounts or of the plant at Dixon would not themselves have been a fraud in law; but connected, as they were, with the other advantages obtained—namely, deprivation of the Fargos of all further power and permission to retain possession of the goods and reap the profits of their trade, a scheme on the whole under which a dishonest trader could effectually shelter himself—they are, in my judgment, within the plain prohibitions of the law," citing *Robinson* v. *Elliott*, (22 Wall. 513.)

The decree of the Circuit Court, while depriving the rubber companies and the Metropolitan National Bank of the prior liens created by the confessed judgments and assignments, placed them in the class with the other creditors, and entitled to share ratably in the distribution of the fund in court.

Mr. Justice Brown, in his dissenting opinion in the Circuit Court of Appeals, thus expressed the same view:

"Upon the whole it does not seem to me that such a case of fraud is made out as authorizes the court to postpone the claims of the preferred creditors to those of the general creditors, and thereby practically to confiscate them; and there is no sound reason for departing from the general rule laid down in the Supreme Court in *White* v. *Cotzhausen*, (129 U. S. 329,) and in *Streeter* v. *Jefferson County Bank*, (147 U. S. 36,) wherein the preferred creditors were permitted, after their security had been set aside, to stand upon an equality with the general creditors."

The case of *White* v. *Cotzhausen* arose under the voluntary assignment act of the State of Illinois, and it was held that creditors who had attempted to secure an illegal preference of their debts by means of a conveyance to

them of the property of their debtor when insolvent, to the exclusion of other creditors, were not thereby debarred, under the operation of the statute, from participating in a distribution, under that act, of all the debtor's property, including that illegally conveyed to them. The Circuit Court held that such illegally preferred creditors should be postponed in the distribution, but this court said, per Mr. Justice Harlan:

"We are not able to assent to this determination of the rights of the parties; for the mother, sisters and brother of Alexander White, Jr., were his creditors, and, so far as the record discloses, they only sought to obtain a preference over the other creditors. But their attempt to obtain such illegal preference ought not to have the effect of depriving them of their interest, under the statute in the proceeds of the property in question, or justify a decree giving a prior right to the appellee. It was not intended by the statute to give priority of right to the creditors who are not preferred. All that the appellee can claim is to participate in such proceeds upon terms of equality with other creditors."

A similar view prevailed in *Streeter* v. *Jefferson County Bank*, and it was held that where a creditor of a bankrupt caused execution to be levied, before the bankruptcy, on goods of the bankrupt to satisfy the debt, and the levy was afterwards set aside as an illegal preference within the purview of the bankrupt act, in consequence of knowledge of the debtor's condition by the plaintiff's attorney, that the creditor was not thereby precluded from proving his debt against the bankrupt.

There is a wide difference between the case of a fraud *ab initio*, such, for instance, as a scheme to enforce a false or pretended indebtedness, so as to remove the assets of an alleged debtor from the reach of his *bona fide* creditors, and the case of an attempt by *bona fide* creditors to secure preferences for themselves, but using methods forbidden by statute or by the policy of law. In the former case, undoubtedly, a court of equity will refuse to permit the guilty parties to derive any profit or advantage from the fraudulent arrangement. In the latter case a court of equity will not declare a forfeiture of just debts, or, by postponing them till all other creditors are satisfied, practically confiscate them, but will, while defeating the attempt to obtain a forbidden preference, leave such creditors to use and enjoy the same rights and remedies possessed by other creditors.

We think the present case is one in which the fundamental rule, that equality is equity, may properly be applied, and that will result in avoiding the attempted preferences and in permitting all the creditors to share ratably in the distribution of the fund in the hands of the receiver.

The decree of the Circuit Court of Appeals is reversed with costs, and that of the Circuit Court is affirmed.

Mr. Justice BROWN did not take part in the decision of the case.